New Beginnings:

Bringing Stability and Structure to Price Determination in the Fishing Industry

Report of the Task Force on Fish/Crab Price Settlement Mechanisms in the Fishing Industry Collective Bargaining Act

January 15, 1998

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Cover Photo: K. Bruce Lane

To: The Honourable John Efford
Minister of Fisheries and Aquaculture
Government of Newfoundland and Labrador

To: The Honourable Oliver Langdon
Minister of Environment and Labour
Government of Newfoundland and Labrador

Dear Sirs:

In fulfilment of our mandate we are pleased to present our report in response to the Terms of Reference that we were given by Government on September 17, 1997, to assess the effectiveness of the Fishing Industry Collective Bargaining Act for negotiating fish prices.

Dated at St. John's, in the Province of Newfoundland, this 15th day of January, 1998.

David A. Vardy
Chair

Joseph O'Neill
Member

David W. Jones
Legal Counsel

Brian A. Delaney
Secretary

ACKNOWLEDGEMENTS

The Task Force expresses our gratitude to everyone who made a contribution to our work. We are particularly indebted to those fish harvesters, fish processors and other interested parties who took the time to meet with us and make presentations during our consultations around the Province. These presentations were invaluable in providing us with an understanding of the issues arising from our Terms of Reference.

Throughout the process, the Task Force worked closely with fish harvesters and processors and with their representatives. Senior executives of the FFAW/CAW and FANL participated with the Task Force in visits to Iceland, Quebec, British Columbia and Japan. The Task Force expresses our profound appreciation for the high level of cooperation and support which we received from: Mr. Earle McCurdy, the President of the FFAW/CAW; Mr. Reg Anstey, Secretary/Treasurer of the FFAW/CAW; and Mr. Alastair O'Reilly, the President of the Fisheries Association of Newfoundland and Labrador. It was through their efforts that we were able to achieve a high level of consensus.

There are a number of people who assisted by facilitating our visits to Iceland, Quebec, British Columbia, and Japan. In this regard, particular thanks are expressed to Mr. Jon Bergs, Honorary Consul General to the Canadian Consulate General in Iceland; Mr. Arni Kolbeinsson, Secretary General to the Icelandic Ministry of Fisheries; Mr. Pierre Vagneux, Director of Policy and Analysis of the Quebec Department of Agriculture, Fisheries and Food; Mr. André Scott, Vice-Chair of the Quebec Farm and Food Marketing Board (The Régie); Professor Joseph Weiler of the Faculty of Law at the University of British Columbia; Mr. Stuart Culbertson, Assistant Deputy Minister of the Ministry of Agriculture, Fisheries and Food in British Columbia and to Mr. Masao Nakai,

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Canadian foreign offices throughout the world helped us in gaining an understanding of price setting mechanisms in various countries including: Australia, the United Kingdom, Chile, Denmark, Finland, France, the Netherlands, New Zealand, Peru and Portugal.

The Department of Fisheries and Oceans was very helpful in supplying information in response to our requests and for this we are grateful to Mr. Lorne Humphries, Regional Director General, and his staff.

The Task Force wishes to express its appreciation to Deputy Ministers Mr. Leslie Dean and Ms. Leslie Grattan and to the staffs of the Department of Fisheries and Aquaculture and the Department of Environment and Labour, who were extremely courteous and cooperative in assisting the Task Force in its work.

Particular thanks are expressed to Ms. Rose Ledwell, our executive secretary, whose dedication, energy and vitality were of incalculable benefit to us in completing this major assignment over a very compressed time frame.

Special thanks are extended to the Government of Newfoundland and Labrador, especially the Honourable Brian Tobin, Premier, the Honourable John Efford, Minister of Fisheries and

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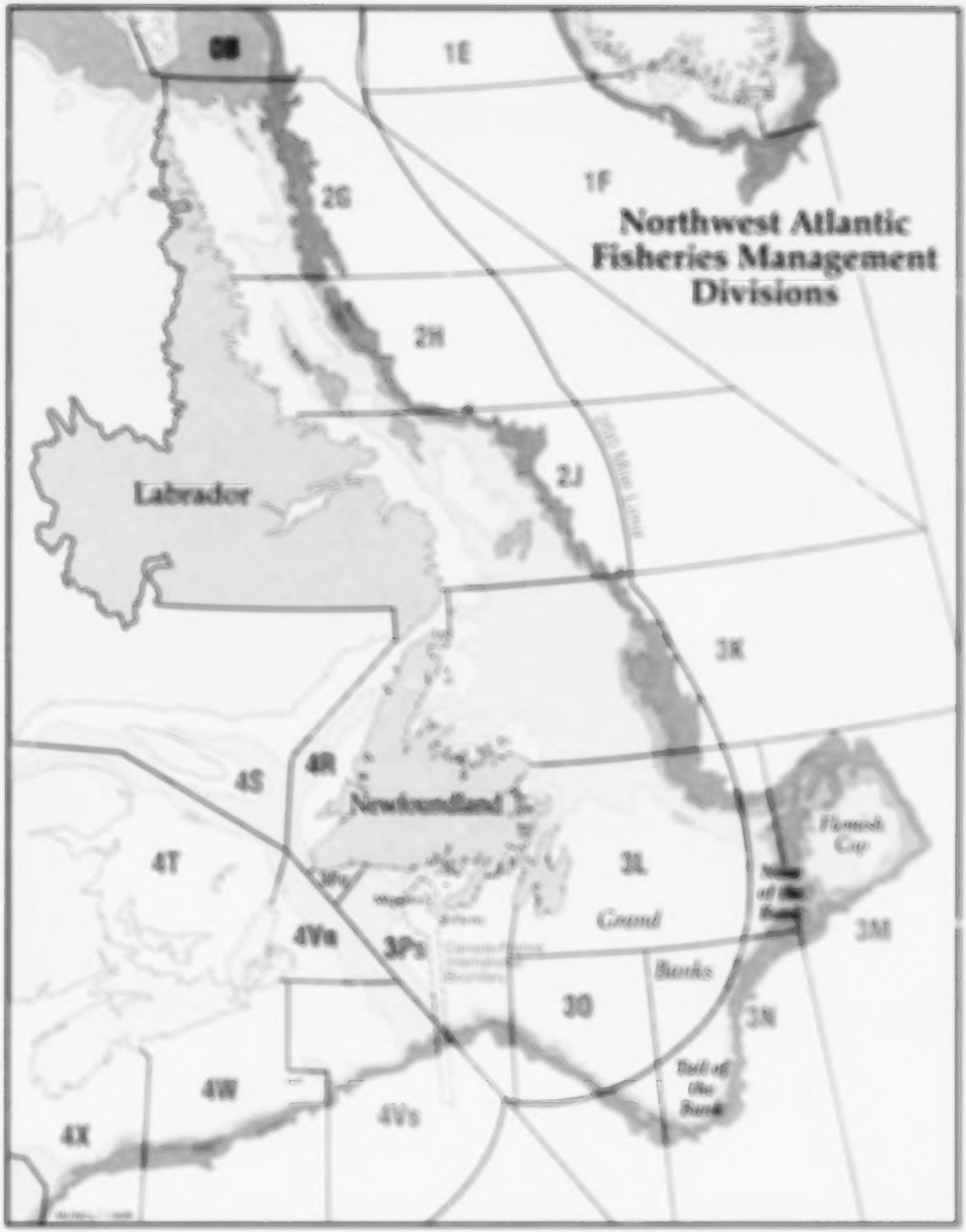
Aquaculture and the Honourable Oliver Langdon, Minister of Environment and Labour, for offering us the opportunity to conduct this challenging undertaking.

David Vardy, Chair

Joseph O'Neill, Member

David Jones, Legal Counsel

Brian Delaney, Task Force Secretary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EXECUTIVE SUMMARY

1. On September 17, 1997, Government appointed a Task Force to assess the effectiveness of the Fishing Industry Collective Bargaining Act as a mechanism for negotiating fish prices. The Task Force was mandated to examine other dispute settlement mechanisms. The Task Force was asked to make recommendations as to how pilot projects could be utilized to experiment with any proposed price setting mechanisms. The Task Force was to enquire into the causes of price disputes in the crab fishery. Also, the Task Force was asked to evaluate the reasons for differences in prices paid to fish harvesters in Newfoundland and Labrador compared with prices paid in other areas.

2. The Task Force was comprised of: David Vardy, Chair of the Public Utilities Board, as Chair of the Task Force; Joseph O'Neill, Assistant Deputy Minister of Labour Relations, as Member; David Jones, Solicitor in the Department of Justice, as Legal Counsel ; and Brian Delaney, Industry Planning Supervisor, in the Department of Fisheries and Aquaculture, as Task Force Secretary and Director of Research.

3. The Task Force finds, on the basis of our consultations, that the Fishing Industry Collective Bargaining Act was neither an obstacle nor a help in reaching a negotiated price for crab/fish. However, amendments are recommended to accommodate the new model for collective bargaining proposed by the Task Force.

4. The Terms of Reference directed the Task Force to identify pilot projects as a means of testing new price setting mechanisms. The Task Force found, in our consultations, that there was a willingness to try new approaches.

5. The Task Force examined a variety of alternative mechanisms for price setting in the harvesting sector. These models included: an open market system as in Nova Scotia; a system of fish auctions like those commonly found in continental Europe; as well as a price settlement board similar to the Farm and Food Marketing Board in Quebec or to the price settlement board which operated in Iceland prior to 1991. Rather than recommending the kind of complete transformation which the adoption of any of these models would entail, the Task Force recommends instead that Government introduce modifications to the existing collective bargaining system and, at the same time, experiment with an auction system. The Task Force notes that auctions and other free market systems are common elsewhere.

6. These modifications are presented in the form of a new model within a collective bargaining framework. The model was the result of a consultation process involving fish harvesters, processors and the representatives of both. The proposal for a pilot project to experiment with a fish auction was, similarly, the result of a consultative and consensus building process.

7. The proposed changes to the collective bargaining system are recommended in the form of a pilot project. A parallel pilot project is proposed in the form of an auction conducted electronically for cod on the South and West coasts. This pilot project would be planned this year, for implementation in 1999.

8. The modifications to the collective bargaining process take the form of a pilot project proposed for 1998 and 1999. The project would be subject to review at the end of 1998. The proposed model would be driven fully by the stakeholders, rather than by Government. Indeed, in designing the model, one of the guiding principles was that government

intervention should be minimized and responsibility should rest in the hands of the parties.

9. The proposed model provides that the FFAW/CAW and FANL engage in interest based bargaining through a joint technical committee with the aid of a mutually selected facilitator, beginning with a fact finding and issue identification phase.

At the outset, an arbitrator-in-waiting would be appointed, kept abreast of the negotiations and provided with all information exchanged in the collective bargaining process. This is one of the innovative features of the proposed mode of arbitration. If the parties do not reach agreement, then they must refer the dispute to the arbitrator, who will select the final offer made by one of the parties. FANL suggested the final offer selection approach, rather than regular arbitration, and the executive of the FFAW/CAW have agreed that they would be prepared to recommend acceptance of the model as proposed, using final offer selection as the form of arbitration. The decision of the arbitrator would have the same binding effect on the parties as would a negotiated collective agreement.

With acceptance of the proposed model there would be no strikes or lockouts as a consequence of a price dispute in 1998 or 1999.

10. The Task Force finds that the 1997 dispute on crab prices arose largely from mistrust among the parties. This mistrust was partly caused by the practice where a number of processors paid prices higher than the negotiated minimum price, immediately after industry representatives in the negotiating process had taken the firm position that no price higher than the minimum could be paid. The high expectations created by the prices paid for snow

crab in 1995, along with the prices offered, or reputed to be offered, in the Maritimes and Quebec, were important contributing factors.

11. The Task Force was asked to evaluate the reasons for differences between crab prices paid in Newfoundland and Labrador and prices paid in other provinces and countries. The Task Force finds that differences in intrinsic characteristics are a major reason for the higher prices in the Maritimes and Quebec.

12. The Task Force also finds that controllable quality factors play a significant role and that there are a wide range of quality initiatives which can reasonably be expected to narrow the price differential, particularly with prices paid in Alaska. The Task Force presents a set of suggestions which can be used as the basis for consultations by Government with the parties.

13. The Task Force examined a variety of issues in an effort to explain these price differences. These issues included: the marketing effectiveness of the Newfoundland and Labrador fishing industry; competition in the industry; and government regulations with respect to processing in the Province. The Task Force also found, that with greater ease of entry into the crab processing sector since 1996, there is now greater potential for competition among processors than before. This more open access is the result of the increase in the number of processing licences.

14. The Task Force examined whether harvesters should be able to sell crab for export in unprocessed form, through a repetition of the removal of the export restriction as was approved by the Minister in 1997, for a two month period. The Task Force recommends a

controlled and closely monitored project and a full benefit cost analysis be undertaken in 1998 which would allow sales to outside buyers by fish harvesters in all regions, but with limits on the amount of unprocessed crab to be exported. These limits should be designed to prevent exports of unprocessed crab from any particular region impacting disproportionately upon processing employment in the region.

15. The Task Force recommends to the parties the development of a pricing structure that recognizes and rewards high quality crab.

16. The Task Force recommends to the parties that a price-to-market formula be used to reward quality and improve transparency.

17. In the interest of creating greater transparency and trust in dealings among processors and harvesters, the Task Force recommends that market price information on actual transactions be made available. This information would be audited by a third party.

18. Fish harvesters told the Task Force of increasing control being exercised by the processing sector over a number of fishing enterprises, particularly those in the large vessel fleet. The Task Force recommends a number of measures designed to strengthen the independence of fish harvesters and to reduce their dependence upon processors for financing. These measures include a review by Government to identify possible new sources of financing for vessels, to provide an alternative to dependence upon processors for financing.

19. The Task Force understands that the FFAW/CAW and FANL will need to explain the

proposed new model for collective bargaining to their members and seek ratification of the pilot project.

20. The Task Force recommends that Government consult fully with the stakeholders on the recommendations of the Task Force with respect to the auction pilot project, quality and port services and facilities.

21. We are grateful for the full cooperation and support which we received from senior executives of the Union and FANL. The Task Force also expresses our appreciation to all of the stakeholders who took the time to meet with the Task Force in our consultations and made presentations to assist in its work. These consultations were of vital importance.

22. The recommendations in this report call for action to be taken on a timely basis. In seeking early and energetic action on our recommendations the Task Force is endorsing the views which were forcefully presented by concerned stakeholders.

Chapter 1

INTRODUCTION & OVERVIEW

Terms of Reference

The Task Force was appointed by the Provincial Government on September 17, 1997, in the aftermath of a strike that occurred in the fishery in 1997, which delayed the opening of the fishing season for crab by some three months. It began its work immediately.

Pursuant to its Terms of Reference, the Task Force was given a mandate to:

1. "Assess the impact, relevance, effectiveness and utility of the Fishing Industry Collective Bargaining Act to the collective bargaining process that exists in the fishing industry, its effect (if any) on the ability of the fishers and fish buyers and processors and their respective representatives to reach a negotiated price for crab/fish and to settle their labour differences, or if modifying, repealing, or replacing the said Act with another statutory or regulatory vehicle would better serve the general public interest and/or the interests of the parties to such negotiations;"

2. "Take into account dispute settlement mechanisms in effect elsewhere in Canada and other nations;"

3. "Assess and determine whether some other approach, being an alternative means of setting the price of crab/fish would better serve the general public interest and the interests of the parties to such negotiations in avoiding or reducing the prospect for industrial disputes and action in future years, and to make recommendations concerning the same; including recommendations as to how pilot projects could be utilized to experiment with any proposed price setting mechanisms."

4. "Inquire into the causes of price disputes which have occurred frequently in the province's crab industry in particular recent years."

5. "Evaluate the reasons for differences between crab prices paid in Newfoundland and prices paid in other crab fishing provinces and countries."

6. "Take into account input relevant to the above matters from joint FFAW/FANL committees created as part of the settlement of the 1997 crab price dispute."

7. "Report on any other matter related to the above;" and

8. "Submit a final report concerning the above matters by January 15, 1998."

Over the course of the next three months the Task Force conducted a series of meetings and consultations with individual fish harvesters, their certified representative for collective bargaining purposes, the Fish, Food and Allied Workers/Canadian Auto Workers Union (FFAW/CAW), individual fish processors, the Fisheries Association of Newfoundland and Labrador (FANL), and various other interested persons. As well, members of the Task Force journeyed to Iceland and to the Canadian provinces of Quebec, and British Columbia to study and discuss with representatives of fish harvesters, fish processors and the governments of these provinces, the various price settlement mechanisms and models in place in each of these jurisdictions. The Task Force also studied how prices were set in Nova Scotia, New Brunswick, Japan, the United States and Norway. Letters were also sent to a number of Canadian Embassies, High Commissions and Consulates around the world soliciting input on alternate price settlement mechanisms. Responses were received from New Zealand, Australia, Chile, Denmark, Peru, France, the Netherlands, Portugal, Poland, Finland and Great Britain. As well, the Chair of the Task Force went to Japan with the Minister of Fisheries and Aquaculture as part of his trade mission. The purpose of this mission was to discuss with Japanese processors and buyers how Newfoundland and Labrador crab is positioned and priced in the Japanese market, and how that positioning and pricing could be improved upon.

Early on in our mandate, the Task Force determined that, if we were to succeed in discharging our duties, that it would be necessary to involve fully in our consultations both of the parties to last

year's price dispute. Consequently, representatives of the FFAW/CAW and of FANL were invited to take part in the Task Force's fact finding efforts/missions and to become full participants in the process of determining the causes of the 1997 crab price dispute and in building a new model/price settlement mechanism to resolve and avoid the adverse industrial consequences of such price disputes in future years. Both organizations, to their respective credits, agreed to so participate. The President of FANL, Mr. Alastair O'Rielly, and the President of the FFAW/CAW, Mr. Earle McCurdy, and on certain occasions, the Secretary-Treasurer of the FFAW/CAW, Mr. Reg Anstey, participated with the Task Force in our visits and fact finding missions to Iceland, Quebec, British Columbia and Japan. As well, the members of both FANL and the FFAW/CAW struck special sub-committees to assist the Task Force in our work.

The importance of the good faith and the investment of time of both of these parties cannot be overstated. Without it, the Task Force could not have succeeded in completing the task at hand. They are to be thanked for their investment of time, their effort, their input and their responses to the many questions and enquiries that the Task Force made of them. The parties' dedication to resolving the issues at hand must continue and be the basis of future settlements.

Guiding Principles

In approaching the task at hand and in discharging our mandate and work, the Task Force was driven by a set of guiding principles which we developed at our first meeting. These principles, which are as follows, were reflected in everything that the Task Force did.

First and foremost was the need to get at the truth - to determine the causes of the price disputes and collective bargaining difficulties in this Province, why fish harvesters appear to be receiving less for their product than fish harvesters elsewhere, and the measures or steps required to address and correct the same.

To this end, the Task Force sought evidence from a number of sources, the harvesters and processors themselves, government and independent sources.

Second, was the need to build trust between the parties and in the process that the Task Force had embarked upon. Without such trust, all hope would be lost for the successful completion of our work. In this regard, the Task Force always conducted it's deliberations in a manner that was non-judgemental and independent of Government.

Third, and related to the second stated principle, was the need to fully involve the parties in the process. Without such involvement, trust in the Task Force and its work could not evolve. In the absence of such involvement, developing a viable solution to the challenges before the Task Force would not have been possible.

Fourth, and emerging from the third principle outlined above, was the need to build consensus between the parties with respect to the problems that the industry had been and is facing and as to how they might be addressed, both now and in the future.

Fifth, was the need to develop practical solutions to the types of industrial relations disputes and problems that had been plaguing the fishing industry in recent years, so that the parties could go forward in a spirit of new beginning for the benefit of all of our people.

Sixth, was the need and the responsibility that rests on the Task Force to report faithfully upon what we heard from all of the parties who appeared before us and who made submissions and to make concrete recommendations for implementation in this coming season, so as to avoid the kind of price settlement difficulties and industrial disputes that have arisen in previous years in the Newfoundland and Labrador fishery.

So that there would be no doubt as to the analytical methodology and approach that the Task Force would take to the challenges posed by the Terms of Reference, the members of the Task Force, during our initial meetings with the parties, took considerable time to ensure that the parties understood the Task Force's approach to the problem at hand and the principles that we would apply in discharging our mandate. In the opinion of the members of the Task Force, no other type of approach would have allowed us to remain in the kind of constant contact with the parties that was necessary to conclude our work in a timely and holistic manner. The members of the Task Force also believe that this type of approach was essential in setting the tone and in building the consensus that was necessary to bring our work to a successful conclusion.

Communications Plan and Consultation Process

At our first meeting, we, the members of the Task Force resolved to "get out there" to listen to the

concerns of individual stakeholders and persons so we could properly do our work. Consequently, ensuring that people were aware of the Task Force's existence and mandate were of prime importance.

Towards that end, and supplemental to the joint press announcement made by the Minister of Fisheries and Aquaculture and the Minister of Environment and Labour on September 17, 1997, the Task Force, having established our offices, placed a series of advertisements in all newspapers in the Robinson Blackmore chain of related and affiliated companies including: the Express (St. John's), the Compass (Carbonear), the Packet (Clarenville), the Southern Gazette (Marystown), the Beacon (Gander), the Pilot (Lewisporte), the Advertiser (Grand Falls-Windsor), the Coaster (Harbour Breton), the Nor'Wester (Springdale), the Humber Log (Corner Brook), the Georgian (Stephenville), the Gulf News (Channel-Port aux Basques), the Aurora (Labrador City), the Labradorian (Happy Valley-Goose Bay), the Northern Pen (St. Anthony), and the Charter (Placentia), the Western Star and in the Evening Telegram, over a two week period in October, 1997. Paid advertisements were also placed on all radio stations of the NewCap Broadcasting Network at St. John's, Musgravetown, Gander, Grand Falls-Windsor, and Corner Brook and on all AM radio stations of the VOCM Network at St. John's, Marystown, Clarenville, Gander, Grand Falls-Windsor, and Baie Verte. Similar notices were also placed on local cable channels throughout the Province affiliated with the VOCM Network. Public Service announcements were also made on the Fisheries Broadcast of CBC Radio One, which reaches all of the Province, over a three week period, commencing in early October, 1997 and in mid November, 1997. Likewise, announcements were made on the Nain Radio Station of the Okalakatiget Society.

In addition to the above, all organizations representing fish harvesters and fish processors in the Province were written by the Task Force and provided with an overview of our mandate. As well, all fish processors and buyers licensed by the Province of Newfoundland and Labrador were written directly, soliciting their input into this process. The Labrador Inuit Association and the Innu Nation, respectively, representing those aboriginal groups with whom the Province is negotiating aboriginal land claims settlements, were also written by the Task Force, seeking their views. Supplemental to the above, the Chair of the Task Force conducted interviews on the Fisheries Broadcast in October and November, 1997 to publicize the work of the Task Force. Additionally, the Chair did a number of follow-up interviews with various print and radio media throughout November and December, 1997. A toll-free number was also established for the use of persons wishing to communicate with the Task Force.

Meetings and consultations in response to expressions of interest from fish harvesters and processors and other persons wishing to make submissions to the Task Force were held at various places around the Province, being as follows: St. John's, Clarenville, Harbour Breton, Grand Falls-Windsor, Deer Lake, St. Anthony, Mary's Harbour and Bay Roberts. The Task Force also arranged to meet with focus groups of fish harvesters and processors at the aforesaid sites to provide us with further sources of information and views on the matters within our mandate. All of these efforts were supplemented by the constant input of FANL and the FFAW/CAW during this process.

In all, the Task Force met with some 133 fish harvesters, most of whom represented others in their fleet sectors, some 29 representatives of fish processors, and a variety of other individuals.

Towards the end of this information gathering process the Task Force held a series of summative meetings at the Bungalow in Bowering Park, St. John's: the first being on December 11, 1997, where we requested FANL and the FFAW/CAW each, in the presence of the other, and being able to question the other, to lay out for the Task Force's benefit the causes of last year's price dispute in the crab industry and of the mistrust that has been growing between fish harvesters and processors in recent years; the second being on December 15, 1997, where it requested representatives of the FFAW/CAW in the presence of FANL representatives to present their position on a series of 40 questions relating to the subject matter of the Task Force; and a third meeting held on December 16, 1997, at which representatives of FANL responded to the same questions. At all these meetings each party was given the opportunity to question the other on its presentation and to engage in a full discussion on issues arising from such presentations.

In the aftermath of these meetings, the Task Force, on the evening of December 16, 1997, presented it's concept of a model for the settlement of fish price disputes. This process led to further discussions over the next several days resulting in the model and recommendations that are contained in this report.

Without this level of extensive travel, consultation, cooperation and hard work, by all involved in this process, the work of the Task Force could never have been properly completed and *the new beginnings* that are proposed in this report would not be possible.

Chapter 2

PRICE SETTING AND RESOURCE ISSUES RELATED TO COLLECTIVE BARGAINING

This chapter will provide a), an historical perspective on the collecting bargaining process in the Newfoundland and Labrador Fishing Industry since 1971, b), an overview of price settlement mechanisms in other countries and Canadian jurisdictions, c), a history and overview of the snow crab fishery as it exists today, and d), a narrative describing the events associated with the 1997 dispute in the snow crab fishery.

Collective Bargaining in the Newfoundland and Labrador Fishing Industry

Prior to 1971, there was no legislative process available whereby fish harvesters in the Province of Newfoundland could engage in collective bargaining with the fish processors to whom they sold their various species of fish. In June of that year, the government of the day, in response to representation by and on behalf of, fish harvesters, passed the Fishing Industry Collective Bargaining Act. That Act, which was very closely modelled after the Labour Relations Act for the Province, (the Act governing private sector labour relations and collective bargaining in Newfoundland and Labrador) provided, among other things:

- the right of fish harvesters to organize into a union;
- the right of fish processors to organize an association;
- the right of fish harvesters to bargain collectively with fish processors over issues affecting their operations, including fish prices; and
- the right to cease business dealings if a collective agreement could not be reached between

fish harvesters and fish processors.

Following the passage of that legislation a series of certification drives was conducted by the Newfoundland Fishermen, Food and Allied Workers Union. These certification drives resulted in a series of certification orders being issued by the Labour Relations Board, giving the Newfoundland Fishermen, Food and Allied Workers Union exclusive authority to act as bargaining agent for a unit of fish harvesters defined in the order. Over a period of sixteen years, a total of thirty-eight certification orders were issued by the Labour Relations Board to the Newfoundland Fishermen, Food and Allied Workers Union, naming it as the exclusive bargaining agent to represent fish harvesters in the fishing area or areas covered by the respective certification orders. For example, in November 1972, a certification order was granted, covering the unit of fish harvesters from Anchor Point in the North to Daniels Harbour in the South, both inclusive, on the Great Northern Peninsula.

These certification orders remained in effect until 1987. In that year, the Newfoundland Fishermen, Food and Allied Workers Union ended its affiliation with the United Food and Commercial Workers Union, the international union with whom it had been associated. Shortly thereafter, the Newfoundland Fishermen, Food and Allied Workers Union chose to affiliate with the Canadian Auto Workers Union and became the Fishermen, Food and Allied Workers/Canadian Auto Workers Union (FFAW/CAW). This resulted in an issue between the United Food and Commercial Workers Union, and the FFAW/CAW to determine who would represent the Province's fish harvesters. This culminated in a province-wide vote of fish harvesters to determine the union they wished to represent

them in collective bargaining. This vote was conducted by the Labour Relations Board. On May 9, 1988 the Labour Relations Board, by order, certified the Fishermen, Food and Allied Workers Union "to be the bargaining agent of the fishermen in the Province of Newfoundland excluding Fogo Island and Communities North of Makkovik and further that the said order of certification apply to all operators purchasing fish within the said area."

Since that date, the FFAW/CAW has been the official bargaining agent for all fish harvesters in Newfoundland and Labrador with the only exceptions being Fogo Island and communities North of Makkovik. By law, any operator purchasing fish from the area prescribed by the certification order must comply with its provisions. At present, no provision exists in the Fishing Industry Collective Bargaining Act providing for provincial accreditation of a fish processor's association.

In the course of its work, the Task Force examined a number of different models in a number of countries and other Canadian jurisdictions for the settlement of prices for various species of fish between fish harvesters and fish processors/buyers. However, none of the models examined provide for the same exclusive coverage of fish harvesters as does the situation in Newfoundland and Labrador as a result of the province wide certification order.

Under the present structure, the FFAW/CAW, representing all fish harvesters, engages in collective bargaining with the Fisheries Association of Newfoundland and Labrador (FANL), representing its member fish processors/buyers with respect to identified fish species, in an attempt to agree on a price to be paid. While legally, processors who are not members of FANL may chose to negotiate

a separate agreement with FFAW/CAW, the industry practice has been that the agreement reached with FANL becomes the standard for the fishing industry.

A failure to reach an agreement on a price for fish harvesters to commence a particular fishery may result in a delay of the fishery. This delay is commonly referred to as a "strike" or "lockout" in the industry or that particular fishery. It has been said that, in three of the last five years, there has been a strike in the snow crab fishery. What has occurred in fact has been a delay in the commencement of that fishery. Notwithstanding that the quota for the fishery for those years was in fact harvested and processed, these recurring price disputes and the delays (strikes) that they have caused have negatively affected our markets and led to social unrest.

During the course of our work, the Task Force found that there is a widely held view among fish harvesters and processors/buyers that, collectively, we must find a better way to address and resolve fish price disputes. This would enable and ensure a timely commencement of the fishing season. Another delay in 1998 is just not acceptable. Aside from the logistical problems created by a delay in the start of the season and the issues related to quality measures and optimal fishing time, there is the insecurity that a labour dispute creates for our customers in the United States and Japanese markets. In the September, 1997 issue of *Japan Fisheries Market Report* from the Canadian Embassy in Tokyo the following comment was made. "Trade is concerned about the delay and impact of Newfoundland snow crab due to the strike this year once again." The challenge for all interested stakeholders in the fishing industry is to ensure our reputation is improved by providing a "comfort zone" to our customers in the United States, Japan and elsewhere that there will be an

orderly and timely start for the fishery in 1998 and beyond.

The current provisions for negotiation of a collective agreement under the Fishing Industry Collective Bargaining Act do not provide for that comfort zone. The provisions for collective bargaining, conciliation and conditions precedent to a cessation of business dealings in the fishing industry, do not lend themselves to the unique and complex nature of this sector. **The Task Force finds that, while the Fishing Industry Collective Bargaining Act may not have facilitated the collective bargaining process in the fishing industry, the legislation was not the cause of the recent price disputes. It was neither helpful nor an impediment to reaching an agreement.**

What is needed is a more focused and structured approach, an approach which would provide time for the parties to come together, using an interest based approach, to address and discuss issues which will have an effect on the fishery for the coming year. This interest based approach should be a prelude to positional bargaining on price. It would serve to "get all the facts on the table". These facts should be supported and supplied by an independent third party, if necessary, and be drawn from sources acceptable to both parties. Only following this process should positional bargaining occur. If an agreement cannot be reached at the conclusion of positional bargaining, a mechanism chosen by the representatives of fish harvesters and processors should be deployed which will set a price. This would allow the fishery to begin and, if necessary, the parties could continue to discuss issues related to the fishery, with a view to reaching common ground.

Legislative change will be required to give effect to a new process. The new process should be a pilot

project. This will give all stakeholders an opportunity to analyse a different approach without having to repeal the existing legislation.

Price Settlement Mechanisms in Other Jurisdictions

In designing a new approach for collective bargaining in the Newfoundland and Labrador fishing industry, the Task Force reviewed the price setting mechanisms for fish in a number of different jurisdictions. The following are summaries of the processes used in five of those jurisdictions: Iceland, Quebec, British Columbia, Japan and Norway. The Task Force visited Iceland, British Columbia and Quebec. The Chair visited Japan as a member of the Mission led by the Minister of Fisheries and Aquaculture in November, 1997. The summary of the Norwegian model was obtained as a result of telephone discussions with a senior Norwegian government official. The model that the Task Force is recommending has elements of each jurisdiction which we visited. The proposed model recognizes the uniqueness of the collective bargaining process in the fishing industry in Newfoundland and Labrador.

Price Setting in Iceland

The price to be paid to fish harvesters in Iceland for wet fish was a continuing source of anguish for many years. A number of stoppages occurred in the harvesting sector. After a major dispute in 1961, Parliament ("the Althing") formally established an official process for setting the price of fish. The Fishing Industry Price Determination Board was established. It operated in two tiers. One tier comprised six representatives of the harvesting sector and six representatives of the processing sector. This group was responsible for arriving at a suitable price for all species of fish. If they were

unable to agree on a price, an upper tier tribunal would settle the price. The upper tier was comprised of two representatives from each sector, with government appointing the fifth representative. The fifth person appointed by government was usually the Director of the Economic Institute of Iceland. A simple majority of the tribunal determined the price for fish for that year.

The Board set the price for fish in Iceland for 30 years. The price was set at three different intervals during the year and it remained constant for that period. In the late 1980's this process became the subject of considerable criticism. The criticism was primarily directed at its lack of response to varying demand and supply conditions. This criticism resulted in the curtailment of the work of the Fish Price Determination Board. Legislation permitting wet fish auction markets was passed in 1987. Since prices in these markets became higher than the official price set by the Fish Price Determination Board the decisions of that Board became less relevant to the price. Accordingly, in 1991, the Fish Price Determination Board stopped issuing price decisions. Since 1991, the wet fish price in Iceland has not been officially determined. The Board is still constituted and could resume setting prices at any time. However, with 35% of the Total Annual Catch ("TAC") of wet fish now going to the auction markets and a call for more to go to the auction markets it is not clear whether there will be a further role for the Fish Price Determination Board.

The ability of fish harvesters in Iceland to choose to sell their fish through the auction system has been available for 10 years. The current auction system is an electronic "Dutch" auction system operated out of many different sites in Iceland. Both small and large vessels use the auction system. These boats engage in the auction through a "hail at sea" approach, whereby they call in their catch

to the independent operator who runs the auction. The quality of the catch is usually known by the past reputation of the boat and crew. Buyers representing processors gather at the selected sites and participate in the "Dutch" auction. These buyers are identified with a key that they enter into an electronic box at the auction site. This key also confirms the particular buyer's line of credit to demonstrate his/her ability to purchase the fish for which they bid.

The Task Force was informed in meetings attended in Iceland, that there is general satisfaction with this kind of auction system in Iceland. Fish harvesters and their Unions would like to see more, if not all, fish go through the auction system. We were told that fish harvesters are so concerned about this that it may in fact precipitate a strike in the industry in 1998.

In addition to fish going to the auction, the other two methods by which fish are sold in Iceland are by direct sales of fish harvesters to fish processors, and by price arrangements between owners of large vessels and the crews, with fish processors. Direct sales usually occur between fish harvesters who fish close to their ports near their home in the more isolated parts of Iceland, particularly the North and Northeast Coasts. Captains of large vessels owned by processors sell their fish to those processors for a previously agreed price which they share with the crew. It is primarily this group who would like to see an expanded auction system, mainly because of the price difference between them and the fish harvesters who sell through the auction.

Price Setting in Quebec:

Quebec moved to change it's system of price settlement for fish harvested in that province in 1991,

the same time as Iceland. The Act respecting the marketing of agricultural products was applied to the fishing industry. This means that a majority of harvesters fishing a particular species of fish in a defined area; such as, the Gaspé, Middle North Shore, Magdalen Islands or the whole of Quebec may apply to the Marketing Board, the Régie, for authority to negotiate prices and other related issues for their catch. The Régie will authorize the group to conduct bargaining provided it is satisfied the marketing plan meets the requirements of the legislation.

The Régie is a quasi-judicial body. It does not receive policy direction from the government. It's decisions are final, except if overturned by Cabinet. This has happened only twice in forty years. The Régie has eight members, including a chair, and three vice-chairs appointed by government for five years. Once a marketing plan is approved for a given species, the Union, on behalf of fish harvesters covered by the plan, serves notice to negotiate with the processors/buyers in the area covered by the plan. These processors/buyers are obligated by law to negotiate with the Union. If no agreement is reached, a request may be made to the Régie by either party to the negotiations to set a price for the commencement of the fishery. The Régie will set up an arbitration panel comprising a vice-chair of the Régie plus two other members. The Régie will then conduct a hearing in which both sides present their positions with respect to a fair price for the start-up of the fishery. After hearing the positions of both sides, the Régie sets a price which typically includes a price-to-market formula and, at times, is for more than one year. Where a price-to-market formula is set, the information upon which that price is based is audited and verified by an independent source acceptable to the stakeholders in the industry. The price is mandatory and must be paid. Despite the fixing of the price, the parties are still free to make alternate arrangements, as they see fit, provided

there is no delay in the start of the fishery. The price set by the Régie can be examined at various intervals and adjustments made, up or down, to reflect any major market variations. Unless the parties negotiate a new price for a given species, last year's closing price is deemed to be the next year's opening price.

During our visit to Quebec, the Task Force was advised that constant dialogue and communications is the key to success in price determination. The Régie encourages settlement by the parties on their own. The parties are free to agree on any sort of practice they feel appropriate and beneficial for all those involved in the fishing venture. This freedom suggests a definite view towards a free and open stakeholder-driven process, where the parties are free to conduct their efforts in a manner that maximizes the benefits of the industry for all those involved. The Régie does not wish to be involved and will only do so when called upon by the parties to set a start-up price for a particular fishery. The Task Force was also informed that, along with continued dialogue, joint committees on issues such as quality, harvesting and marketing are also a key component of the process.

The Vice-Chair of the Régie responsible for the fishing sector attends the annual meetings of buyers and harvesters. This is done to establish credibility in the process should the need arise for the Régie to set a price for the commencement of the fishery. It is also important that both parties have access to reliable, timely and independent information on current market trends and competitive forces affecting the fishing industry in Quebec. The marketing plan has been compared to a business contract as well as a labour contract. The marketing plan covers approximately 35% of total fish landings in Quebec, broken down as follows:

- 75% of all lobster landings
- 30% of all crab landings
- 100% of all turbot landings

Some concern has been expressed recently over the right of the parties to take decisions of the Régie to court. The Vice-Chair of the Régie stated that there was a perception that the process was becoming overly legalistic. Both sides have been appearing before the Régie presenting very detailed argument in support of their respective positions. To combat this trend, the Régie is moving away from the three member arbitration model to a one person facilitation model without the involvement of legal counsel. The parties themselves present their positions to a one person board and an attempt is made at resolution. Failing resolution, the arbitrator will render a decision. This decision will then be the effective price for the particular fishery. The Quebec system allows the parties the alternative to reach a different settlement in the event they do not agree with the decision of the Régie. This has in fact occurred on at least one occasion.

In discussions with the Union, representing fish harvesters, and the Association, representing fish processors, the Task Force was told that, in their opinion, the process used in Quebec to determine fish prices works effectively. They did not appear to have any real concerns that decisions of the Régie, in cases where the parties could not reach an agreement on fish prices, would be such to make participation in the industry, by harvesters or processors, unprofitable or impracticable.

As with any structured system there is a cost associated with its administration. In the case of the

price settlement mechanism in Quebec the cost is shared equally between the parties.

Price Setting in British Columbia:

Unlike the situation in Newfoundland and Labrador, no union has been certified province wide to represent fish harvesters in British Columbia. A group of harvesters may or may not have a union represent them in price negotiations for a particular species with the processors or the processors' association purchasing their fish. Many harvesters do not belong to a union in British Columbia. If they were unable to reach an agreement on price, the fish harvesters could simply refuse to fish. There has been an arbitration mechanism for resolving fish price disputes in the Fisheries Act of British Columbia since 1930. However, negative experiences with this process have resulted in the parties choosing to ignore it as a means of settling a price dispute.

British Columbia, much like other major fishing jurisdictions, realized a few years ago that there were growing concerns and issues in its industry that needed to be addressed. A Task Force was struck in 1994 to examine industrial productivity in the fishing industry and make recommendations for change. In October 1994, the Task Force expressed it's concern over the protracted, adversarial relationship between the union and the processor's association. Since the Fishing Collective Bargaining Act of 1994 did not address an alternative means of reaching agreement on fish prices, or the availability of dispute resolution mechanisms other than strike or lockout, the Task Force suggested a further study be undertaken to fill this major gap in public policy in the regulation of the commercial fishing industry.

Coming out of this initiative was a process that resulted in a three year collective agreement between the union, representing salmon fishermen, and the association, representing salmon processors. The process is commonly referred to as a "mutual gains" bargaining model. Both sides realized that in order to address the ongoing problems in the industry, and their impact on price setting, there would have to be increased transparency with regard to issues affecting harvesters and processors. The mutual gains bargaining model was a beginning.

The mutual gains bargaining process was facilitated by Professor Joseph M. Weiler from the Faculty of Law at the University of British Columbia. Professor Weiler later became a mediator in collective bargaining and the arbitrator in arbitration decisions on a price re-opener provision in the collective agreement for 1997. The mutual gains bargaining process consisted of a joint technical committee comprised of equal representatives of the union and equal representatives of the association with Professor Weiler acting as the facilitator. Their task was to ascertain the factual issues that would likely impact on price structure for salmon, over the duration of the collective agreement to be bargained.

The Collective Agreement eventually reached was achieved without the need for the parties to go to arbitration. The interest based/collective bargaining process, aided by Professor Weiler acting as facilitator cum mediator, achieved a three year collective agreement. That agreement contained a mutually acceptable price-to-market formula for determination of salmon prices for the duration of the agreement. In the event of a disagreement during the life of the agreement an arbitrator would render a binding decision. The information to be used in the price-to-market formula was to be

evaluated by an independent agency acceptable to both parties.

This was the first time the mutual gains process was used in British Columbia to resolve prices in the fishing industry. The process ran into difficulty in 1997 as a result of a misunderstanding between the parties over the application of the price re-opener in the third year of the agreement. An arbitrator's decision on that misunderstanding ruled in favour of the processors. Subsequent rulings by Professor Weiler, on the price to be paid for salmon resulted in a reduction of the price paid to fish harvesters. These rulings have created some uncertainty for harvesters as to the utility of the process in future.

Another element of the system in British Columbia is the fact that the same individual, Professor Weiler, served in the capacity of facilitator, mediator and arbitrator. In the model proposed by this Task Force for collective bargaining in this Province, the facilitator and the arbitrator would be two different individuals, appointed at the beginning of the process.

In our discussions with union and processor representatives, both agreed that this model for collective bargaining worked well as far as its intended purpose was concerned. It is certainly worthy of further discussion and analysis, despite the fact that the events in 1997 have caused some concern over its future utility.

Price Setting In Japan

Price setting in Japan is performed through a highly developed two level port auction process. In

the first level, fish harvesters sell their catches into a primary level auction, of which there are about 600 throughout Japan. The second level auctions are the wholesale display auctions, of which there are 93. All of the fish which goes to market in Japan goes into a display auction. The Japanese feel that a display is necessary in order for quality to be measured and for proper inspection to take place. The largest wholesale market is the Tsukiji Market in Tokyo. The prices to fish harvesters are established in the level one auction, based upon the prices set in the wholesale auctions and in the final consumer market.

There is no collective bargaining for the price of fish in Japan, neither is there a minimum price set in the auction markets. While fish harvesters believe that the administrative costs associated with the two level auction systems are high they are not seeking fundamental changes in the auction system. Fish harvesters believe that the auction system gives them the best value for their catch. Therefore, they are not seeking to introduce collective bargaining for fish price settlement.

Price Setting in Norway

The price settlement mechanism for fish in Norway is unlike that in any other jurisdiction that the Task Force studied. The Norwegian Raw Fish Act and Regulations state that all fish, with the exception of farmed salmon, must be marketed through a sales organization established and controlled by fish harvesters. These sales organizations have been given the power by the Norwegian Parliament (the "Storting") to establish the conditions of sale with respect to issues such as quality and supply and to set the minimum price at which the fish, by category, is sold. The Norwegian Raw Fish Act permits such sales organizations to be established on a species and/or

geographical area coverage basis.

Once recognized in regulation, each established sales organization is given a monopoly over primary fish harvester to processor or market fish sales for the species or geographic area concerned, not unlike the situation with the former Canadian Saltfish Corporation.

Under the Raw Fish Act public inspectors/controllers have been appointed by the Ministry to oversee the activities of each such sales organization to ensure adherence to the law. In practice, the person so appointed is usually a judge whose power is to report to the Minister any irregularities or violations of the law. The Task Force was advised by Ministry officials that this seldom happens since once the Judges' legal advice on a matter is given to the sales organization in question, it is, as a general rule, respected and followed.

Historically, the Norwegian government provided an extensive series of subsidies to established sales organizations. These subsidies usually took the form of price supports and/or transportation subsidies. Since 1991, however, such subsidies have been reduced, forcing these sales organizations to become self-sufficient.

At present there are six such sales organizations in Norway: one for pelagics (i.e., herring, mackerel) and other species, except cod, covering the whole of the country; and five sales organizations for cod, organized on a regional basis.

As a supplement to traditional buying arrangements through sales organizations, an electronic auction system for herring, mackerel and cod, administered by sales organizations having the monopoly in those areas, has been introduced on the West coast of the country. Ministry officials advised that it is likely that this auction system will be expanded over time. As with all sales conducted through these respective sales organizations, payment is made for fish directly to them and they settle their accounts on a periodic basis with the fish harvesters concerned. Fish harvesters pay a fee/levy of approximately two percent of the gross value of sales.

Ministry officials report that fish harvesters, who are highly unionized in Norway, are generally satisfied with the way the system is working. Processors, on the other hand, would generally like a more liberalized system. Overall, however, there seems to be general acceptance of the evolving Norwegian model by both fish harvesters and processors and the public.

When asked by the Task Force why the current system works, Norwegian Ministry officials stated that it was because sales organizations had permitted minimum prices to be set at reasonable levels at which both the fish harvesters and the fish processors could make a profit.

Other Price Settlement Mechanisms

In its research on price settlement mechanisms used in other jurisdictions, the Task Force made contacts with individuals or groups in a total of fifteen countries throughout the world. The names of the countries contacted are listed in Table 1. The Task Force found that the principal system used to set ex vessel fish prices was the free market system. For the most part, as Table 1 shows, the free

market systems consisted of either auctions, direct sales, or a combination of both methods. In all, thirteen of the fifteen countries contacted were either using, or were in the process of setting up, an auction system. All of these countries had some form of direct sales. Norway and Poland are moving towards auction systems.

Table 1

Summary of Price Settlement Mechanisms

Country or Region	Method of Fish Sales/Purchases
Australia	Free Market, Dutch auctions, direct sales.
Chile	Free Market, direct sales
Denmark	Free Market, auctions, direct sales
Finland	Free Market, auctions , direct sales
France	Free Market, auctions, direct sales
Great Britain (UK)	Free Market, auctions, direct sales
Iceland	Free Market, auctions, Direct sales (Suspended legislation for price setting)
Japan	Free Market, Two tier auction system
Netherlands	Free Market, auctions, direct sales
Norway	Legislation empowering fish associations to set price, evolving auction system.
Peru	Free Market, direct sales
Poland	State Control/Movement to Free Market/Auctions
Portugal	Free Market, auction.
United States	Free Market, direct sales, auctions
New Zealand	Free market, auctions
Canada	
Nova Scotia	Free Market, Direct sales
New Brunswick	Free Market, Direct sales
Quebec	Direct sales, arbitration
British Columbia	Direct Sales, Mutual Gains Bargaining, Arbitration
Newfoundland and Labrador	Direct Sales, collective bargaining on minimum prices.

Source: FAO; DFO; Task Force

Background on Resource Issues

This section of the report will outline changes that have occurred in the Province's fishing industry over the past number of years and will provide an overview of the crab industry.

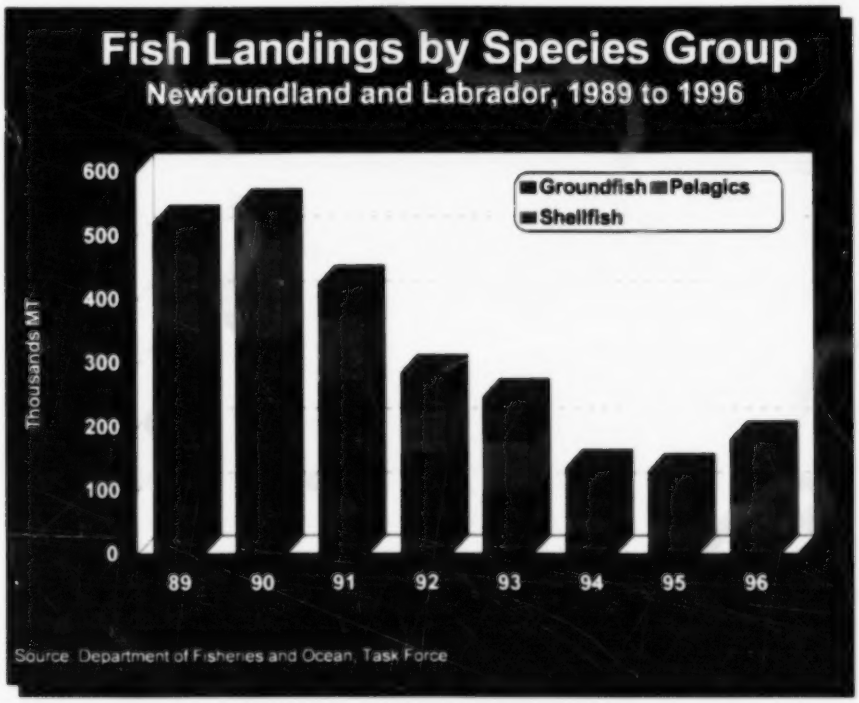

Chart 1

The harvesting sector has faced considerable challenges in recent years, as shown in Charts 1 and 2, as principal groundfish species have been placed under moratoria, thereby forcing large numbers of individuals out of traditional fisheries. However, shellfish harvests have not been able to offset the loss in fishing opportunities that had existed prior to the groundfish collapse. The number of

fishers harvesting crab, the principal shellfish species for the inshore and near shore sectors, has increased considerably over the past four years. Labour disputes have occurred as landed prices declined from a period of record high levels in 1995. Lower prices directly impact the incomes of harvesters and any decline in income levels is generally met with resistance.

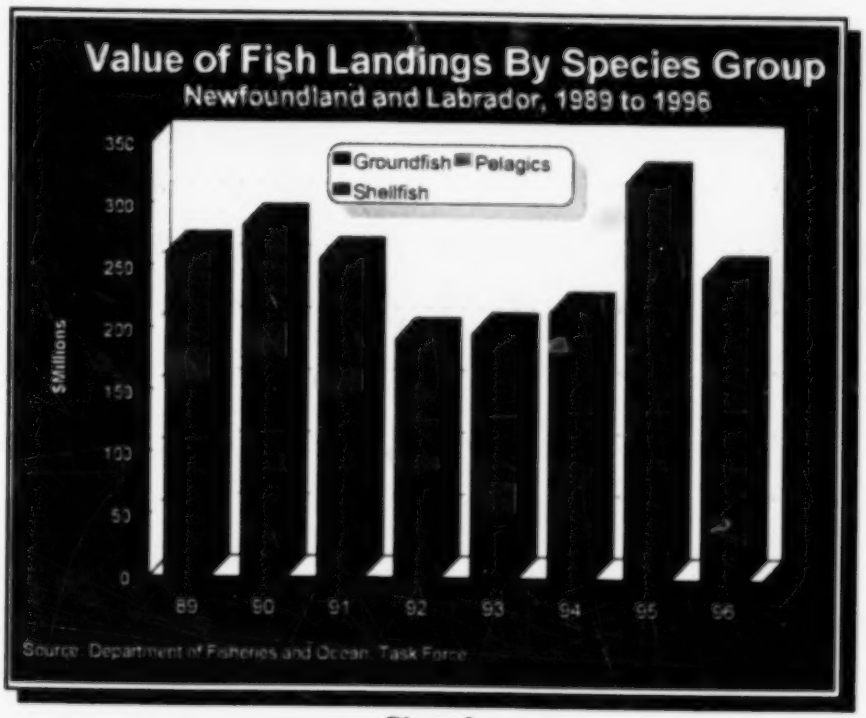

Chart 2

The fishing industry has changed considerably over the past ten years. A fishery dominated by groundfish harvesting and production has shifted to an industry where shellfish is the principal species group. This change in industry structure was the result of the moratoria on key groundfish stocks and the increased abundance of shellfish species, such as crab and shrimp.

Shellfish has replaced groundfish as the most important species group. In 1989, shellfish represented

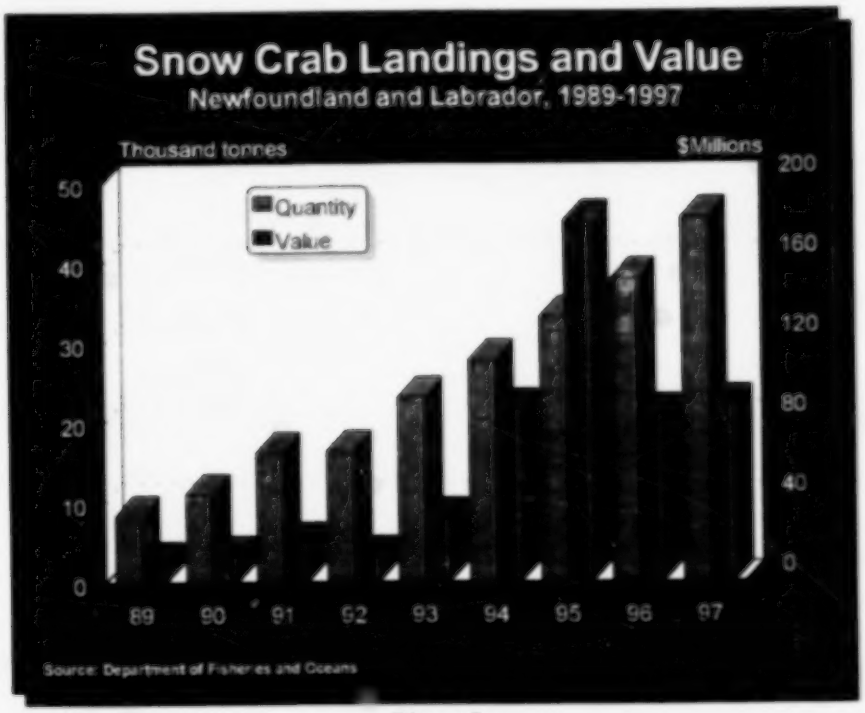

Chart 3

21 percent of total landed value, compared with 80 percent in 1996. In terms of landings, shellfish increased from approximately 29,800 tonnes valued at $52 million in 1989 to 99,000 tonnes valued at $192 million in 1996. Snow crab and shrimp were the principal shellfish species harvested in 1996. Landings of snow crab have increased from 8,400 tonnes in 1989 with a value of $10.3 million to over 38,000 tonnes in 1996, worth about $84 million. Preliminary estimates for 1997 indicate that landings totalled 45,600 tonnes with a value of $88 million. The total landed value of crab in 1995 reached a record $180 million as shown in Chart 3.

Between 1989 and 1993 landed prices for snow crab ranged between $0.36 and $0.70 per pound. In 1994, prices increased to $1.41 per pound and jumped to as high as $2.47 per pound in 1995. This represented a significant increase over prices paid in 1994 and was a record price for crab. Prices subsequently declined in 1996 to approximately $1.17 per pound and in 1997 to an estimated average of $0.88 per pound.

Shrimp harvests have increased from around 12,800 tonnes in 1989 to 20,000 tonnes in 1996. Quotas were increased by 20,000 tonnes in 1997 and further increases are expected in 1998. Healthy stocks, combined with firm markets, have spurred growth in this sector. Significant growth is expected to continue in this sector over the next four years, as biomass levels are expected to continue to improve.

The principal pelagic species harvested in Newfoundland and Labrador are capelin, herring and mackerel. While these species have not been under moratoria, quotas and catch levels have declined over the past several years. This has further compounded resource related problems within the industry, especially the absence of the once profitable capelin fishery.

The destination of the province's fish products has also changed over the 1989 to 1996 period. In 1989 about 71 percent of fish exports by value were shipped to the United States and about 10 percent to Asian countries. By 1996, only 42 percent of fish exports were destined for the United States while 44 percent went to Asian markets. Most exports to the United States had been high volumes of groundfish. Principal products shipped to Asian markets have been shellfish. The

volumes of fish that supported the harvesting sector have dropped. However, the number of harvesters has not declined proportionately. Indeed, in 1989, there were over 14,650 fulltime

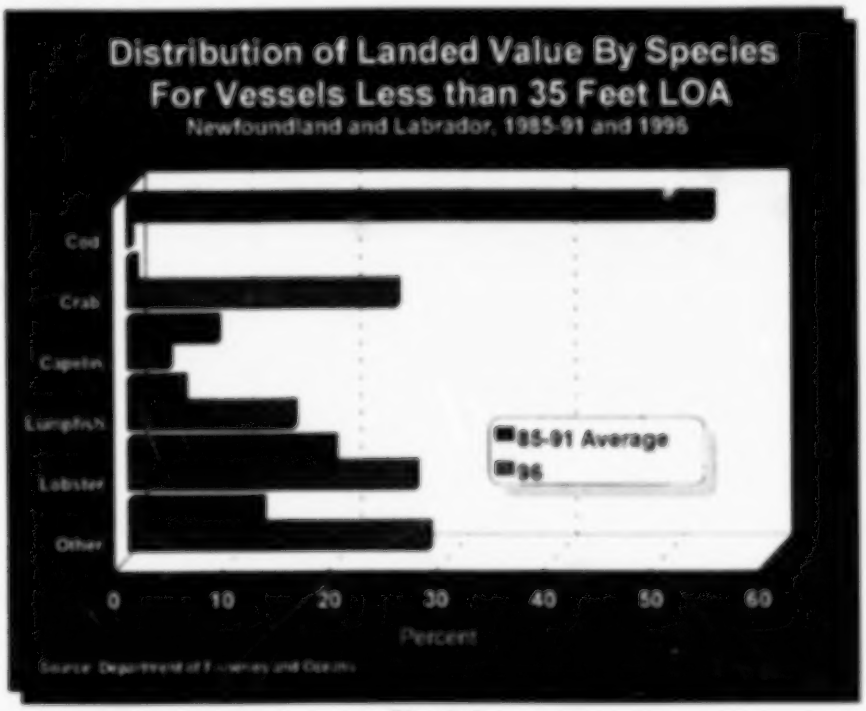

Chart 4

fishing licenses. By 1996, this had declined only moderately, to 13,060 fulltime licenses.

Harvesters using vessels less than 35 feet in length have historically been dependent on cod. Cod represented approximately 55 percent of the 1985-1991 average landed value for these enterprises whereas crab represented less than one percent. By 1996, the relative importance of cod had declined to 1.3 percent of total landed value and crab had increased to 25 percent as shown in Chart

4. It is also important to note that the total landed value had declined from the 1985-1991 average landed value of $81 million to $58.2 million in 1996.

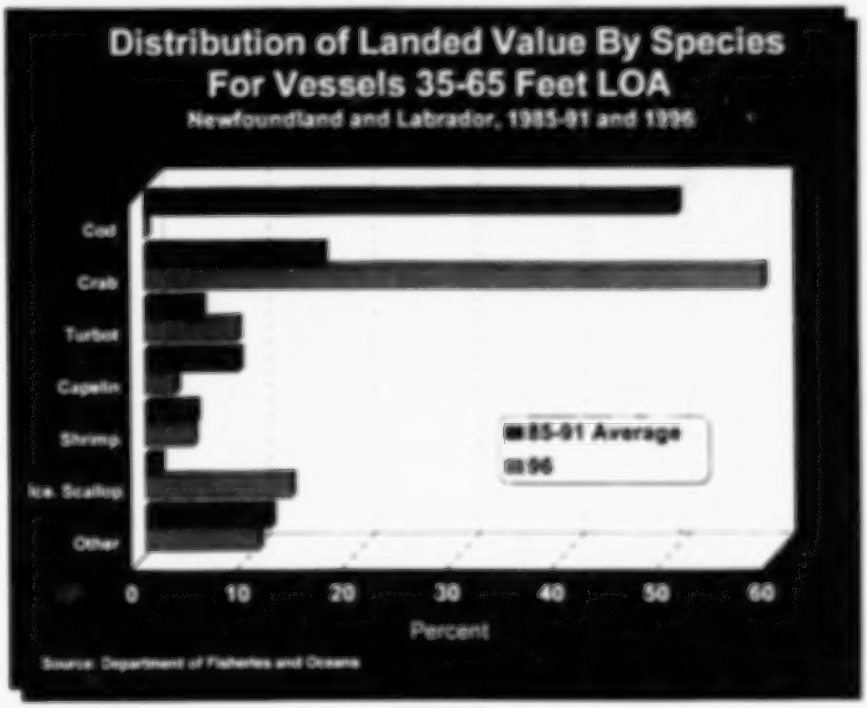

Chart 5

The dependence on crab for fish harvesters using vessels between 35 and 65 feet in length has also increased significantly. Cod represented about 51 percent of average landed value over the 1985-1991 period and crab represented 17 percent. By 1996, crab represented about 59 percent of the total landed value for the 35-65 foot sector, as shown in Chart 5. The main difference between this group and enterprises in the less than thirty-five foot fleet is the fact that the average landed value for larger vessels has increased from the 1985-1991 average of $76.8 million to $115.6 million in

1996 while landed value declined for the less than 35 foot vessels. For larger vessels, crab landings appear to have replaced the income lost from cod. This is not the case for smaller vessels.

Development of the Crab Industry

As noted, the fishing industry has changed considerably with the crab sector emerging as the dominant force in this transformation. Spurred by healthy crab stocks and new fishing areas, the number of licenses and quotas has increased significantly. At the same time, prices for crab have increased, resulting in record landed values for this sector.

The main species of crab harvested in Newfoundland and Labrador waters, and the one that has been the subject of recent price disputes, is *Chinocetes opilio* (snow crab). This is the same species as is caught in other Eastern Canadian fisheries. However, environmental conditions result in differences in appearance and shell quality, depending on the area fished. Quotas are typically set so that fifty to sixty percent of male crab recruited each year can be caught. Crab caught must have a minimum carapace size of 3.75 inches and there is no exploitation of female crab.

Changes in environmental and predator-prey relationships can influence growth and recruitment levels. The decline in the Northern cod and other groundfish stocks is believed to have had a positive impact on recruitment in the crab fishery. Crab represent a significant part of the diet for codfish and with the decline in cod, there are fewer predators and, hence, larger quantities of crab.

In response to increasing quotas and landed values, the number of crab harvesting licenses issued

by the Department of Fisheries and Oceans has increased substantially. The total number of licences has increased from 700 in 1989 to over 3,000 in 1997. The main types are the full time, supplementary, temporary and exploratory. The number of full time licenses has increased marginally from 70 in 1989 to 72 full time licenses in 1996. Full-time operators mainly use vessels in the 55-65 foot range and can legally set 800 traps.

The number of supplementary licenses has increased by eleven percent from 624 in 1989 to 692 in 1997. In recent years, supplementary licenses have been further broken down into sub categories of supplementary, supplementary large and supplementary small. These licenses are held mainly by vessel owners with boats in the 35-65 foot range. Typically, supplementary licenses have a trap limit of between 150 to 500 pots.

Temporary licenses are predominantly licenses issued to fish harvesters with vessels less than 35 feet in length. Temporary small boat licenses were first issued in 1995 when 407 licenses were issued. This has increased to 1,805 in 1996 and to 2,273 in 1997.

Exploratory licenses are typically allocated for areas that have not been fished commercially and are usually given to existing licence holders.

Since 1995, the crab fishery has had an individual quota (IQ) system. The system was voluntary in 1995 but became compulsory in 1996 and 1997. Prior to 1995, quotas were competitive within each fleet sector.

While the number of harvesting licenses increased considerably in recent years, the number of crab processing licenses remained relatively constant throughout the 1990's, at nineteen plants. In 1996, three additional licenses were issued and another fourteen licenses were awarded in 1997, bringing the total number of plants to 36. There were, however, only 25 active crab plants in 1997.

The product mix has also changed over the past eight years. Plant output has changed from about 95 percent meat to a product mix of about thirty percent meat and seventy percent semi-processed sections. This change in production is a reflection of expanding markets for crab sections and a relaxation of a provincial policy which had required that all crab must be fully processed in the Province.

Landings by Licence Type

As landings expanded, the proportionate share of landings by the full time crab fleet has declined relative to the supplementary crab fleet and temporary license holders. Chart 6 shows that the landings of crab by full time licence holders have not increased at the same rate as landings for other license sectors. Landings for the full time fleet averaged 8,000 tonnes over the 1989-97 period, peaking in 1994 at 10,860 tonnes. The low for this period was 5,700 tonnes in 1989. Average landings per full time license increased 62 percent from approximately 82 tonnes in 1989 to an estimated 133 tonnes in 1997.

Most of the increases in quota and landings have occurred in the supplementary license group. Landings for this sector totalled 2,600 tonnes in 1989, and by 1997, landings by all supplementary

license holders totalled 28,000 tonnes; a tenfold increase. The average landings per supplementary license have increased over 600 percent from about 6 tonnes in 1989, to approximately 40 tonnes

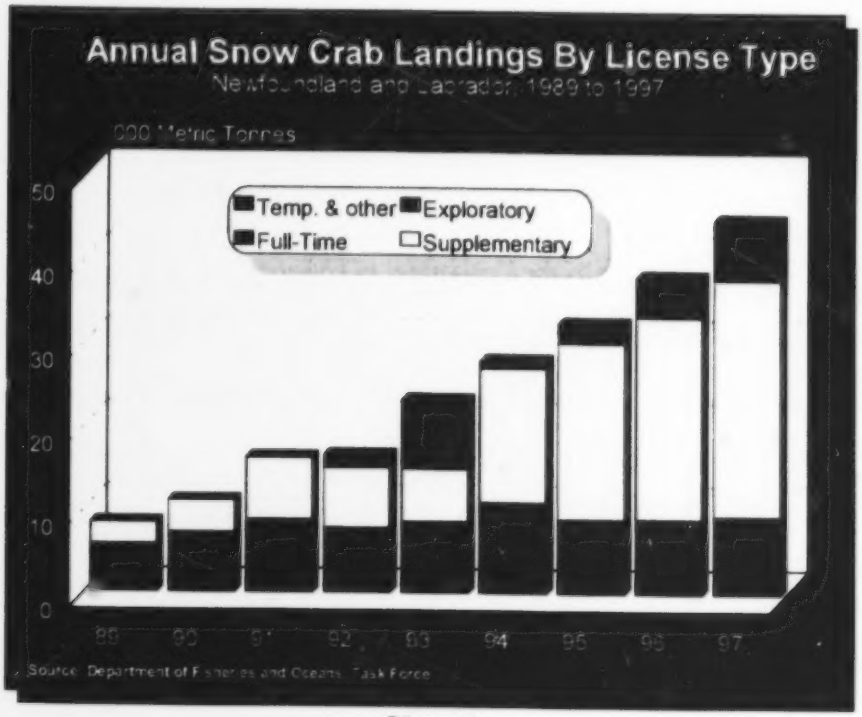

Chart 6

in 1997. In 1989, thirty-one percent of all crab was caught by the supplementary fleet, however, by 1997, sixty-three percent of all landings came from this sector.

Similarly, temporary license holders, have had their landings increase from 1,950 tonnes in 1995 to around 6,000 tonnes in 1997. Average landings in 1995 were 5 tonnes, however, as new licenses have been issued, average landings have declined to 2.6 tonnes in 1997.

Seasonality of Landings

As stated earlier in this report the volume of crab landings has increased considerably. However, the increased volumes are being landed in a shorter time frame. Labour disputes, combined with new licenses for small boat operators and the lack of opportunities in other groundfish fisheries, have resulted in peak landings for crab during summer months. This results in a glut situation for many plants and is not conducive to the production of a high quality product.

The opening of the crab fishery is set by the Department of Fisheries and Oceans in its management plan for the resource. The dates for the beginning of the fishery in each area and fleet sector have been staggered by about four weeks. Generally, the full time vessels begin the fishery first, followed by the supplementary and then temporary license holders. The harvest of crab has historically been spread over seven to eight months. From 1987 to 1991, the season generally began in April or May and ended in October or November. Peak landings occurred in September or June. In the period 1992-1994, the seasonal concentration of landings increased with peak landings occurring in June or July and the season running from about May to September/October. Chart 7 clearly illustrates this compression. It is ironic that despite a management plan which prescribes an early opening date for the crab fishery, since 1995, peak landings have occurred in July and August when air temperatures are at their warmest and the percentage of soft shell crab is at its highest. Peak landings for 1996 occurred in July and in 1997 in August with over 21,500 tonnes landed.

As a result, large volumes of crab are now being landed and processed during a compressed time frame. Indeed, since 1995 more crab is being landed in one month than was landed during an entire

year in the 1980's. The reasons for this seasonal compression in landings are fourfold. Firstly, labour disputes in 1996 and 1997 delayed the opening of the season. In 1997, the crab harvesting season did not begin until late July. A similar problem occurred in 1996.

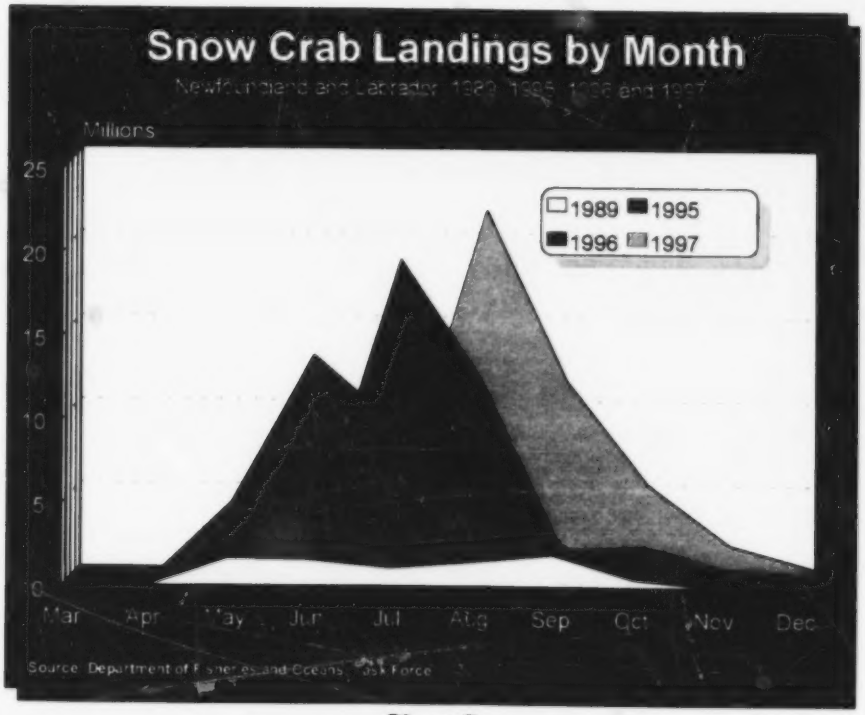

Chart 7

Secondly, until 1995, the Total Allowable Catch (TAC) for crab was a competitive fleet quota system and this provided the incentive for fishers to catch as much crab as possible as soon as possible. Increasing prices, combined with the lack of opportunities in other fisheries, helped fuel this increased competition for the resource, thereby shortening the fishing season.

The third contributing factor to a shorter season is believed to be the increase in the number of temporary licenses. The operating season for small boat operators with temporary licenses is shorter than for larger fleet sectors. Small open boats can only operate in the summer months, when weather conditions are favourable. This increases the volume of raw material that must be landed during a two to three month time period.

Fourth, environmental conditions can impact on landings. However, ice conditions have not been a significant factor in delaying the fishery over the past four years. In addition, ice conditions along the Labrador Coast tend to result in this fishery starting later than fisheries on the Island.

The early settlement of crab prices and the introduction of an individual quota system, should help return the fishery to historical patterns of lower seasonality. A price settlement early in the year will be the main factor in spreading the season over a longer period of time. With the new IQ system, fishers will be able to catch their quota at a time convenient for them rather than having to fish competitively. However, unless further measures are taken, the high quotas will continue to result in the landing of large volumes of crab in the summer months. This points to the need for other measures, such as greater control over, and possible reduction in, trip limits.

The 1997 Crab Dispute

The 1997 crab dispute forced a three month delay in the crab fishing season. This dispute was a direct result of the inability of the FFAW/CAW and FANL to reach an agreement on the price for crab. Talks broke off early in the season resulting in job action by members of the FFAW/CAW.

Mistrust and other factors (discussed infra) prevented a timely settlement of the dispute. Indeed, the entire fishing season was almost lost.

Informal talks between FANL and the FFAW/CAW began in mid March with the first formal meeting occurring on March 26, 1997. Both parties met and FANL gave a presentation outlining the market conditions over the past few months and provided an overview of the market outlook. While no formal price was offered, the general interpretation of FANL's presentation by the FFAW/CAW suggested that the parties were far apart. The meeting was adjourned with no future talks scheduled.

Between April 20-27, 1997, a strike vote was conducted by the FFAW/CAW. On April 21, an application was made to the Minister of Environment and Labour to appoint a conciliation board. The Conciliation Board, consisting of Mr. W. Wayne Thistle, Mr. Ray Andrews, and Mr. O. Noel Clarke, was established and began its work on May 1, 1997.

The Board held meetings throughout May and released its report on May 30, 1997. The report was not acceptable to the parties. On June 3, at the request of the President of the FFAW/CAW, the Minister of Fisheries and Aquaculture announced a thirty day lifting of the restriction on the export of crab. On June 4, the Minister and Deputy Minister of Fisheries and Aquaculture met with fish harvesters and representatives of the FFAW/CAW. The public meeting ended abruptly with some discord.

On July 3-4, FANL and the FFAW/CAW resumed negotiations. Discussions were limited to crab

quality and the parties remained far apart on price. Recognizing the precarious position the industry was in, and the potential for the entire season to be lost, the Premier and the Minister of Fisheries and Aquaculture intervened and called a number of representatives of both parties together. On July 7, at this meeting a tentative agreement on price was reached. Negotiations proceeded on July 10-11 and a full agreement was struck and sent to members for ratification. The agreement was ratified with a sixty percent acceptance level by the FFAW/CAW and the season formally opened on July 21, 1997.

In our Terms of Reference, the Task Force was mandated to determine the causes of this dispute. The reasons for the dispute vary depending on the perspective of the respective parties. However, there are common themes that have emerged. These themes include mistrust and a lack of transparency, weakening crab markets and falling product prices, differentials in prices with other jurisdictions, and the approach taken towards collective bargaining by both parties.

The mistrust found throughout the industry is generally directed towards the processing sector. The FFAW/CAW felt that there had been a history of low initial offers and that this had become a bargaining tactic. Indeed, while one price was being discussed at the bargaining table, some processors, they stated, were offering higher prices to individual fish harvesters. Anecdotal evidence suggests that the ink was not dry on such collective agreements before side deals were brokered and higher prices were paid.

As well, the number of crab processing plants remained unchanged over the 1992-1995 period while

throughput per plant increased considerably. The lack of new entrants during this period, and the absence of outside buyers, were seen as government imposed measures that resulted in the limiting of competition for crab and, hence, contributed to lower prices being paid. In addition, conspicuous consumption by some plant owners suggested to some fish harvesters that they may not be getting their fair share of market returns.

The differentials in prices paid to fish harvesters between other Atlantic regions and Newfoundland further compounded the mistrust between fish harvesters and processors. There has consistently been a difference between the price paid in Newfoundland and Labrador and those paid in other Atlantic regions. This difference was taken as a sign by some harvesters that they were being treated unfairly by Newfoundland and Labrador processors. Pressure was placed on the Government to relax the restriction on the export of crab so that harvesters could get the prices that were being paid elsewhere.

The income of fish harvesters is directly tied to the landed price received and, as with wages and income in general, any downward movement in income that results from lower prices is met with resistance. Harvesters had experienced a substantial drop in landed prices in 1996 versus prices paid in 1995 and suggestions were made by FANL at the beginning of 1997 that prices could be expected to continue to fall. From the harvesters' perspective, they were reluctant to take another pay cut. This made negotiations more difficult and is believed to have contributed to the prolonged nature of this year's strike.

FANL appeared to have taken the initial market signals of 1997 as a sign that markets would continue to decline throughout the season. The increased Alaskan quota had not yet impacted fully on the market place. The demand for crab was believed to be declining in Japan as the recession in that country deepened and the value of the yen dropped. Reaching an agreement early in the season was seen by FANL as carrying with it a substantial degree of financial risk. In this environment union price expectations and demands were seen as unreasonably high. The United States crab market, stabilized in July and August.

As well, there was a lack of any common information base in which both parties had trust related to crab market trends and prices.

The increase in the number of harvesting licenses from 1995 to 1997 was cited by FANL as a reason for the difficulty in obtaining a price settlement in 1997. The FFAW/CAW stated that this was not a factor and that there was broad support throughout all fleet sectors for the bargaining position taken.

It appears that both parties took divergent positions for reasons outlined previously and did not move from their respective positions in the period from March to June 1997. Once formal negotiations broke off, no further meetings were scheduled and there are no indications that any effort was made to reconcile differences until July. Table 2 provides a chronology of these events. Preventing a similar series of events from repeating themselves in 1998 is one of the primary objectives of this Task Force.

Table 2

Chronology of Events
1997 Crab Price Dispute

Date	Event
March 19, 1997	Meeting between FANL and FFAW/CAW
March 26, 1997	Opening round of negotiations - First formal meeting.
April 21, 1997	Application to Minister of Environment and Labour for conciliation.
April 20-27, 1997	Strike vote taken by FFAW/CAW
May 1, 1997	FANL and FFAW/CAW Meetings with Conciliation Board.
May 6, 1997	FANL and FFAW/CAW Presentations to Conciliation Board.
May 15-16, 1997	FFAW/CAW and FANL meetings with Conciliation Board.
May 30, 1997	Release of Conciliation Board Report.
June 3 and 4, 1997	Announcement of 30 day lifting of live export ban
June 4, 1997	Minister and Deputy Minister meet with harvesters at Mary Queen of Peace
July 3 and 4, 1997	FFAW/CAW and FANL resume negotiations.
July 7, 1997	Meeting between Premier, Minister of Fisheries and Aquaculture, and representatives of FFAW/CAW and FANL.
July 10-11, 1997	FANL and FFAW/CAW reach agreement
July 13-17, 1997	Ratification of Agreement by FFAW/CAW
July 21, 1997	End of Strike

Source: Conciliation Board Report; FFAW/CAW; Task Force

The Task Force finds that the 1997 labour dispute in the crab sector was caused by a series of events in order of importance including:

1. **The mistrust between parties that was based on experiences from past collective bargaining;**
2. **High expectations created by record high prices in 1995 and by prices offered, and reputed to being offered, in the Maritimes and Quebec;**
3. **Uncertainty generated by market conditions and the lack of independent information; and**
4. **The breakdown of negotiations early in the season.**

Chapter 3

ISSUES RAISED IN CONSULTATIONS

In this chapter, the Task Force will report on the views heard during our consultations. The fundamental issue, and the subject of the strike in the 1997 crab fishery, was the decline in prices offered for crab from those paid in 1995 and 1996, along with the differential between prices paid in the port market for crab between Newfoundland and Labrador, and the Maritimes and Quebec. These price issues were of critical importance to Newfoundland and Labrador fish harvesters and their Union. Flowing from these price issues was a wide range of concerns extending well beyond the collective bargaining process and the Fishing Industry Collective Bargaining Act. The Task Force has grouped these issues into the following categories, for purposes of this report:

- Effect of Strike in 1997;
- Legislation;
- Trust and transparency;
- Quality Issues;
- Marketing Issues;
- Competition;
- Outside buyers;
- Auction system;
- Resource Issues;
- Research;
- Timing and conduct of negotiations;

- Pricing Issues ;
- Port Designation;
- Other Issues.

Effect of Strikes

The strikes in the fishery over the past few years have had an adverse impact on all sectors of the industry. In the market for our products, strikes have called into question our reliability as a supplier of seafood. Further strikes have the potential to inflict serious damage to our position in the market. It is for this reason that Government decided to appoint the Task Force to see if there is an alternative approach which can avoid the crippling impact of a strike as a result of a failure to reach agreement on prices.

With the virtual closure of the groundfish sector, the opportunities available to harvesters, particularly the small vessel sector, are quite limited. Generally, as shown in Chapter Two of this report, larger vessels have fishing opportunities other than snow crab available to them, such as offshore scallops, turbot and the emerging shrimp fishery.

Delays in the crab fishery have impacted upon other fisheries as well. Fishing enterprises have had to pursue other fisheries at inappropriate times as a result of the crab strike.

In 1997, the strike led to a situation where 47 percent of crab landings took place in August, when water temperatures were high and when the ambient air temperature was higher than is ideal for

handling and processing. Soft shell problems are also more prevalent in the month of August. From the standpoint of processing workers, the strike had the effect of shortening the season and making it more difficult to qualify for Employment Insurance. The higher than normal peak volume of landings in August also had the effect of drawing inexperienced and untrained workers into the plants.

Legislation

The recent strikes have had the effect of calling into question the effectiveness and relevance of the existing legislation for collective bargaining in the fishing industry, namely, the Fishing Industry Collective Bargaining Act. This legislation has now been in effect for 26 years. Some of those who made presentations to the Task Force felt that a different approach should be put in place. Various stakeholders suggested appointment of an arbitration board to set prices, with the members of the board to be independent of any vested interest in the fishing industry.

FANL has suggested that greater flexibility be afforded so that different regions and fleet sectors would be free to choose the mechanism by which to conduct the sale of their catch. They would like to see an open system which would allow prices to be more responsive to market conditions, without the necessity of imposing a uniform set of prices upon the entire industry. FANL has taken the view that the establishment of a yearly price for all fleet sectors, over all seasons, does not make sense. In their presentation to the Task Force, FANL said that most countries and provinces use a free market system, which in most cases includes fish auctions. FANL stated that Newfoundland and Labrador is the only province or country that exclusively uses a collective bargaining system to set

fish prices.

In meetings with the Task Force, processors expressed concern about the fact that crew members and skippers have an equal vote in the bargaining process. They also consider it inappropriate for small quota holders to have the same voting rights as those with larger quotas of snow crab.

The FFAW/CAW said that the existing structure was not a significant factor in the strike vote of 1997 or in the ratification of the agreement in 1997 and that there was broad support among all fleet sectors for the position taken in each case.

With respect to arbitration, FANL stated that any third party intervention in resolving price disputes should be based upon joint agreement among the parties. They said that intervention by government would be unworkable.

The Task Force asked the parties for their views on final offer selection, which is a form of arbitration in which the arbitrator or arbitration panel can chose only between the final offers given in a negotiation process by each of the parties. FANL said that this is the preferred option in that it forces the parties to move closer together toward a mutually agreed settlement.

The FFAW/CAW would like to see amendments to the Fishing Industry Collective Bargaining Act but they do not favour repealing or replacing the Act. The proposed amendments would provide for the establishment of more relevant time limits and permit collective agreements of less than one

year's duration. Both the Union and FANL favour a pilot project whereby an alternative approach to price settlement can be tested. Such a pilot project is proposed in Chapter Nine of this report. Both have also indicated they would be prepared to adopt final offer selection, as part of this model.

Trust and Transparency

Fish harvesters have expressed strong feelings of mistrust toward processors, arising largely from negotiations on snow crab prices. This mistrust was conditioned by the reduction in prices offered by processors in 1996 and 1997, from the high level of prices which were paid in 1995, as well as by the differential between Newfoundland and Labrador prices and those offered by processors in the Maritimes and Quebec. Harvesters and their Union were also concerned with the fact that some processors are quick to offer prices higher than the minimum negotiated to some members of the large vessel fleets, shortly after negotiations are finalized. They view this as evidence of an ability to pay higher prices in the bargaining process, despite protestations to the contrary. Fish harvesters see this as reflecting a lack of good faith by FANL and it's member companies.

In the course of consultations, the Task Force was told that many large quota holders receive significant "under the table" payments. Some of these side payments are alleged to be in the form of cash while others are in other forms (e.g., access to vehicles, condominiums, and paid vacations). In some cases, these side payments are shared with crew members, while in other cases they are not shared.

It is the understanding of the Task Force that, as long as these payments are reported, for tax

purposes, there is nothing illegal about them. If there are allegations of tax evasion, then persons with a basis to believe that such tax evasion is taking place through side payments, either in cash or in kind, should refer the matter to the appropriate tax authorities for investigation.

The lack of trust which pervades the fishery today has arisen by virtue of the lack of transparency in the relationship between processors and fish harvesters. The allegations about side payments confirm this lack of trust.

Furthermore, fish harvesters are concerned that processors are attempting to ensure stability of supply by means which are seen as being prejudicial to the independence of harvesters as risk bearing entrepreneurs. These include the financing of vessels and the provision of working capital to fish harvesters. In other cases, processors have de facto ownership of vessels by virtue of the funds advanced from processors to harvesters. This is seen as a covert effort to achieve vertical integration, in defiance of the fleet separation policy of the Federal Government. This fleet separation policy prevents processing companies from holding licences for fishing vessels of less than 65 ft. overall length, subject to provisions for grandfathering of those vessels which had been vertically integrated prior to the introduction of the policy.

In this regard, the Task Force was told that, when large sums of money are advanced by processors to fish harvesters, there is a requirement that the harvester sign a contract giving the processor exclusive access to the harvester's catch and permitting an assignment of catch. The purpose of the assignment is to ensure early repayment from the proceeds of the catch. These contracts are seen as

impairing the economic freedom and independence of harvesters.

Fish harvesters also expressed concerns about the grading system used by processors. Tavel Ltd. conducts this grading program as a paid contractor for the processors, working through FANL. Some harvesters believe that graders need to be independent of the processors to make objective and unbiased decisions with respect to the grading of fish landed.

Concerns were expressed about the practice whereby processors make "weighbacks" or downward adjustments in the weights which had been measured at the point of landing. This has the effect of reducing the amount paid for the catch. These weighbacks were alleged to be unfair and, in some cases, the Task Force was told that crab, which was weighed back, was subsequently processed by the processor in question. Harvesters requested that such rejected crab be dumped and evidence of its rejection be made transparent, or else that rejected crab be given back to the harvester for discard.

The distrust of processors manifested itself in comments on a number of issues as follows:

- accusations that processors were not handling and processing crab in a quality conscious manner;
- accusations that processors were not marketing effectively;
- statements that processors do not share market information on prices received for product supplied by the harvesters; and
- statements that fish processors do not respect fish harvesters and their businesses as independent enterprises which take the same kind of business risks as do processors.

The Task Force was surprised to learn that many fish harvesters had never been inside a fish plant to see how their product was processed and that few processors have communicated with harvesters in a meaningful way as to their quality expectations or been onboard their vessels.

One of the presentations made to the Task Force proposed that there be an electronic record of all transactions which would be available to all stakeholders. This would include all information on prices, landings, production and inventories. This proposal was advanced as a method to address the question of mistrust, by creating a full data base which would be available to all participants, by way of the Internet.

The FFAW/CAW commented on the possible role which could be performed by a third party in providing independent market analysis. In their presentation to the Task Force, the Union recommended that the original role of the now defunct Fishing Industry Advisory Board be re-examined. Third party assistance could be helpful in devising a price-to-market formula based upon a tabulation of actual transactions. This analysis could be conducted by a mutually acceptable and independent third party which could maintain the confidentiality of data supplied by individual companies. The Task Force notes that the powers of investigation which previously rested in the Fishing Industry Advisory Board under the Fishing Industry Advisory Board Act are now vested in the Minister of Fisheries and Aquaculture in the Fisheries Act.

The Task Force recommends to Government that an Industrial Analysis and

Market Intelligence Unit be established in the Department of Fisheries and Aquaculture, to assist the parties in gathering information for the purpose of price negotiations.

The Task Force notes that the Minister of Fisheries and Aquaculture will be leading a delegation of harvesters and processors to Japan early in the year to assist them in understanding the Japanese market, both in terms of product specifications and the outlook for 1998. This mission is an effort to provide the parties with an opportunity to review the market on a first hand basis.

The Task Force recommends to the parties that a process be put in place, on a pilot project basis, for the compilation of price information on the prices realized in the marketplace for Newfoundland and Labrador snow crab. This information should be compiled for 1998 and 1999, concurrently with the period for the proposed pilot project on price settlement recommended by the Task Force in Chapter Nine. These data should be assembled by a mutually acceptable third party, with safeguards to prevent disclosure of proprietary information. This project should track the final net sales price, excluding commissions, paid in all markets in which Newfoundland and Labrador snow crab is sold.

The Task Force recommends to the parties that, in the interest of creating greater transparency in grading and weighing of snow crab, an assessment be

undertaken of the feasibility of creating a joint FFAW/CAW and FANL body to oversee the conduct of grading and weighing, with such a body to commence operation prior to the 1999 fishery.

Quality Issues

The issue of quality was raised in most of the consultations held by the Task Force. This was seen to be an issue of central importance. Fish harvesters generally agreed that quality is an important issue and that improved quality will lead to higher prices to harvesters. They also felt that quality problems tend to arise more in the handling and processing stages than in the harvesting stage. There was a sense that quality control measures can be improved. While the Task Force will be reporting on quality in Chapter Five, the following is a list of points raised in the consultations:

- Harvesters told of crab being rejected for quality reasons by one buyer and purchased subsequently by another;
- Harvesters say they should be informed of the disposal of their rejected product. If it is rejected, some harvesters said it should be returned to them for disposal;
- Some harvesters stated a negotiated price should provide a premium for quality;
- Certain harvesters said the difference in quality between Newfoundland and Labrador snow crab and New Brunswick snow crab is not enough to justify such a large price differential;
- Harvesters said that long waits to unload at the wharf, especially in the summer, continue to lower quality;
- Harvesters alleged that processors leave raw material in trucks and in containers for long periods of time before processing;

- Harvesters expressed the view that truckers have to be better informed and educated about the need to maintain product at the proper temperature and relative humidity;
- Small boat operators should be able to combine quotas so as to fish more effectively, while improving safety and enhancing the quality of their product;
- Harvesters said proper icing is as important as adequate icing, if not more important;
- Many harvesters expressed the view that there are many differences in intrinsic quality of Newfoundland and Labrador crab from one region to another. For example, West coast crab is said to be comparable with crab from New Brunswick, most of which goes into the speciality market in Japan;
- A number of fish harvesters offered the view that refrigerated sea water systems could provide the best onboard solution for quality and maintenance of crab;
- Providing that high quality can be achieved throughout the chain from vessel to plant, then cryogenic freezing, using CO_2 or N_2, is preferred by the Japanese market to brine or blast freezing; and
- There was wide agreement that the industry achieved a higher level of quality in 1997 than in previous years. In the submission to the Task Force by the FFAW/CAW a statement was made that "the provisions of the collective agreement between FFAW/CAW and FANL led to significant improvements in the quality of crab landed, primarily because of the greatly increased level of icing."

In FANL's submission, reference was made to noticeable improvements in quality "arising solely from the parties' agreement to grade for critically weak crab demonstrates what could be realized

if the season could be started earlier and the various fleets better scheduled."

In the collective agreement signed by FANL and the FFAW/CAW in July of 1997, Article No. 9 refers to a joint working group with sub-committees to be set up. Article 9 of the agreement reads as follows:

> "FANL and FFAW/CAW agree to set up a joint Working Group with sub-committees dealing with quality, markets and price mechanisms. The parties will draw up terms of reference for this joint Working Group consistent with the objective of improving the quality and marketing return of our crab as well as improving industrial relations between the parties. The review of quality considerations will cover all aspects of the handling of crab, including on the fishing vessel, on the wharf, on the truck and in the plant."

In their presentation to the Task Force on December 16, 1997, FANL identified quality as the most critical issue. They went on to say that quality is compromised by the collective bargaining system and because of that fact prices are based upon the lowest common denominator. FANL said that both parties must agree to the joint development of grading systems and that a comprehensive system of quality improvement must be a precursor to collective bargaining on prices. FANL also expressed the view that the industry should be allowed to regulate itself, with minimal government involvement. They emphasized that quality should not continue to be used as a "bargaining chip" in negotiations.

During a meeting with the FFAW/CAW and FANL, the Union expressed the view that quality issues cannot be isolated from the collective bargaining process. FANL's comment, in a letter to the Chairman of the Task Force dated December 19, 1997, was that "collective bargaining has

compromised quality and resource management objectives since it's inception. Price discussions should only occur following resolution of quality grading procedures/practices, quota opening dates, trip limits, etc. . . . We have heard no arguments that would logically support the continued inclusion of quality and resource management matters in price negotiation."

Marketing Issues

In discussing the prices offered to harvesters, the question was raised as to whether the industry is effectively marketing Newfoundland and Labrador products. Some stakeholders argued in favour of a marketing board. The Task Force commissioned a separate study into markets and marketing, with particular reference to snow crab. This study focused upon the position of Newfoundland and Labrador snow crab in the market and how this position might be enhanced. While marketing will be the subject of Chapter Six in this report, the following points should be noted from our consultations:

- Newfoundland and Labrador is such a small player on the world market that it is a price taker and has no influence on world prices for crab;
- Prices should be based upon changes in market conditions, by the use of a price-to-market formula; and
- More market information has to be made known during negotiations.

Competition

An issue which was frequently raised during consultations was the lack of competition at the port market. While there was recognition that the number of processing licenses has increased over the

last few years, from 19 to 36, there have also been other changes in the industry which are perceived to have reduced competition. Harvesters referred to the acquisition of the Daley Group of companies by Conpak Seafoods Inc., which places seven crab plants under one corporate structure. Some harvesters also referred to a "cartel" that is dominated by larger processors which operates to keep prices lower than they should be. These harvesters went so far as to say that FANL should be disbanded. They said that smaller processors, with less influence in FANL, tend to pay higher prices than larger firms.

The Task Force referred earlier to the financial arrangements between harvesters and processors which have the effect of reducing the independence of the harvesting sector through loans made and controlling interests taken by processors. While the exact magnitude of these financial arrangements is not known with accuracy, it is estimated by processors to be more than $20 million. The Task Force has been informed that, with the elimination of the Fisheries Loan Board, and the reluctance of banks to provide funding to fishing enterprises, that harvesters have had to rely more and more on funding from processors.

In addition to the provision of funding there are other activities which also impinge on the independence of harvesters. Access to bait and to "free" ice are examples frequently cited, where processors provide supplies in exchange for fish/crab.

Outside Buyers

Harvesters spoke out strongly on the issue of outside buyers. They stated their belief that the

Newfoundland and Labrador fish processing industry is controlled by a "cartel" and that outside buyers represent the only real competition to this group. They said that these buyers sometimes pay up to double the negotiated price for snow crab. Harvesters understand that the sale of unprocessed crab has the effect of transferring processing jobs elsewhere. However, they argue that the price difference is so high that it is not fair to expect harvesters as independent business people and risk takers to forego the benefit of these higher prices. They said that as independent business people they should have the right to market their fish wherever they wished, regardless of any benefit arising from a price difference. This is further discussed in Chapter Four.

Auction System

One of the parties who came before the Task Force provided a tentative plan for the establishment of an auction system. The Task Force was told that the intention is that this system would be operational early in 1998.

When the Task Force visited Iceland it found that an electronic auction was an important part of the Icelandic price settlement system. A number of the stakeholders from whom the Task Force heard were of the view that an auction system could be advantageous in this Province. An auction system would provide an avenue whereby prices in the fishing industry could become more responsive to market forces. In an auction system, with prices free to seek their own level, the prices offered for the catch of a particular vessel would reflect it's reputation for landing a quality product. Some harvesters said that an auction would not work because of the "cartel", along with increased corporate concentration and economic ties between harvesters and processors. This issue is also

discussed in Chapter Four.

Resource Issues

There was a view that resource management should aim to achieve both good conservation and also to support high quality standards. It was agreed that trip limits established by the parties and by the Department of Fisheries and Oceans should be enforced strictly, along with other management measures.

The present two price system based upon size was considered by many to be detrimental by encouraging high-grading and the discard of small crab. Officials of the Department of Fisheries and Oceans share this concern. The 3K Crab Committee said that most 3K crab is over 4 inches and that this is not a problem in their area. Other harvesters said that the effect of high grading could be a diminished stock of large breeders and thus a lower rate of recruitment into the crab fishery.

Other issues heard by the Task Force were as follows:

- Some harvesters argued for an expanded protected zone for small vessels;
- Concern was expressed over the damage done through cracked shells to crab stocks as a result of testing for soft shell crab;
- The problem of ghost nets was raised as a source of crab mortality. One fish harvester reported on hundreds and hundreds of pounds of crab in one fleet of eight or ten gillnets that was retrieved from the waters off Petty Harbour. These gillnets were said to have been in the water since 1991 and were in excellent fishing condition. This fish harvester recommends

that there be a dedicated, large scale effort to clean up these ghost nets;

- Some small boat fish harvesters said that they should be able to combine quotas on a single vessel in the interest of efficiency, safety and quality. This would require changes to the Department of Fisheries and Oceans regulations;
- The Task Force was informed of the problems associated with bitter crab disease and it was suggested that the Department of Fisheries and Oceans should put in place a regulation to ensure that crab harvested with this disease be separated from healthy crab, brought to shore and properly disposed of on land; and
- The Task Force was told that the budget of the Department of Fisheries and Oceans for crab research and management science in Newfoundland and Labrador is extremely small. This important industry merits greater priority in terms of scientific research to provide the basis for sound management and conservation.

Research

In addition to scientific research on conservation issues, there is a need to conduct other applied research. In terms of product development, the level of research spending by government and industry is virtually negligible. If the Newfoundland and Labrador industry is to move toward the high end of the product/pack mix, there should be a commitment of funds, both public and private, to applied research. The Canadian Centre for Fisheries Innovation along with FANL, have been working together to find a dry process for extracting salad meat from crab shells. Current extractive technology is based upon a washing process which removes some of the flavour, while a dry process would hopefully retain the full flavour of the meat. The Task Force is also aware of a local high

technology company which has produced a system for removing leech eggs and barnacles from crab shells.

The Task Force recommends that an expanded commitment be given to industrial research by both the public and private sector, to improve quality and to enhance the value and consumer recognition of Newfoundland and Labrador crab products.

Timing and Conduct of Negotiations

In it's consultations, the Task Force was told that an early start to the fishery is vital. The meat content is higher and soft shell is not a problem early in the spring. To facilitate such an early start, an agreement on prices should be reached at an early date.

The FFAW/CAW said that "The ideal time for collective bargaining for crab prices is in February or March of each year. Ideally, a tentative agreement should be reached by approximately the 15th or 20th of March to allow time for ratification in order to allow commencement of the crab fishery by April 1st." FANL took a similar position.

FANL have said that ". . . the parties should work within very restrictive time frames/deadlines following which third party intervention would be mandatory."

With regard to other species, the FFAW/CAW said "With the exception of capelin for which the

market is not normally clarified until later in the spring, the March/April time frame is the key time for negotiation for most species." FANL also said that negotiations should be concluded for species other than capelin in March or April but that "capelin must necessarily await resolution of price/demand projections by the Japanese buyers."

With regard to transparency, there was a strong view from harvesters that there must be more information available before negotiations take place, including information on market trends and the ability of processors to pay.

The Task Force heard comments on the conduct of the negotiations. The general view was comments by third parties in the past have negatively impacted upon the negotiating process and that there should be no comment until such time as the parties have issued a statement.

The Task Force recommends that the parties establish a schedule for each species for which prices are to be negotiated and that the schedule allow for a period of both fact finding and bargaining.

The Task Force recommends that, during the life of the pilot project, negotiations be conducted under a news blackout until such time as the parties issue a joint statement.

Pricing Issues

The Task Force heard a variety of views as to how prices should be designed or structured. Most of these views were critical of the current practice of setting only minimum prices on a uniform basis for all regions and all fleet sectors. As noted earlier, there was also some criticism of the two price system. Other issues relate to the following:

- Regional Prices
- Fleet sector prices
- Price to market adjustments
- Price differentials for quality product

Regional Prices

The FFAW/CAW said that "There is no evidence that a regional pricing or bargaining process would be beneficial." Rather, differentials should ". . . be tied to quality and to the value of the delivered product." FANL, on the other hand, said that regional prices may have some merit. However, they also said that the objective should be for prices to be based on quality and size.

Fleet Sector Prices

The Task Force asked the parties whether price differentials should be established upon a fleet sector basis. The FFAW/CAW replied that price differentials, if any, should be tied to the quality and value of the product and not based upon the fleet sector of origin. FANL generally agreed with this comment.

Price-to-market formula

Use of a price-to-market formula was endorsed by the FFAW/CAW and fish harvesters generally. The Union said that "The most problematic aspect of this approach is to establish an accurate reflection of market prices and to have an accurate estimate of processing costs so as to determine a fair market share. A formula approach would be well suited to the crab fishery, as well as to shrimp, and in some circumstances, groundfish." FANL also supported a price-to-market formula. However they expressed a caveat with respect to retroactive payments at the end of the season. FANL would appear to support periodic adjustments based upon prices obtained by processors in recent transactions and applied on a go forward basis to prices paid to harvesters. Such adjustments would lead to in-season variations in price which might impact differently on different fleet sectors, assuming they fish for crab at different times. An end of season adjustment, on the other hand, would result in a uniform adjustment in the prices paid to all fleet sectors on a retrospective, rather than a prospective, basis. Both approaches encourage harvesters to land a high quality product.

Quality Differentials

Many harvesters in consultations conducted by the Task Force expressed strong support for a price premium to reflect high quality crab/fish. The present system lacks such an incentive mechanism. Other harvesters took an opposing view and argued that a price system based upon quality would provide a mechanism to downgrade the value of their catch.

The FFAW/CAW believes that "The parties to collective bargaining should work toward a system of premium prices for premium quality product in order to provide appropriate incentives." FANL

has also taken a positive position on premium pricing. The Marine Institute report on quality commissioned by the Task Force describes the challenges associated with the design of a pricing system based upon quality. One of their suggestions is that a study be commissioned to design an objective measure for freshness. Such a measure would facilitate the introduction of a pricing system which would reward harvesters who land high quality material.

The Task Force takes the view that the pricing structure is a matter which should be determined by the parties in collective bargaining. However, the Task Force recommends to the parties that price incentives be established to reward and encourage the highest quality standards. Furthermore, the Task Force recommends that the parties give consideration to the establishment of a price-to-market formula both for the purpose of rewarding quality and also to improve transparency and trust. Such transparency and trust would be enhanced through the disclosure of the actual returns received by the Newfoundland and Labrador fishing industry in the various marketplaces which it supplies, based upon an audit of these prices through the review of sales invoices conducted by an independent third party.

Port Designation

The Task Force believes that a reduction in the number of landing ports could improve the efficiency of the collection system and also enhance the quality of product. FANL takes the position that the number of landing sites must be dramatically reduced, in the interests of quality, quota monitoring

costs, dockside grading costs and transportation expenses. FANL notes the importance of consultations with affected fish harvesters on this issue. The Union is of the view that such changes would have to be negotiated between the parties.

The Marine Institute report has suggested that the number of designated landing ports be substantially reduced from the approximately 200 named for the 1997 fishery. The report proposes that each designated landing site be established with a core group of services and facilities, including the following:

- storage facilities
- insulated accommodation for graders
- mechanical hoists
- truck loading facilities
- approved water supply

Other issues

There were a number of other comments received from stakeholders. These are summarized in point form as follows:

- Some harvesters felt that plant workers should share the burden of any deterioration in market prices. They felt that they have been bearing too much of the burden themselves; and
- Concerns were expressed with regard to prices received for lumpfish and for whelk. Some harvesters believed that prices should be negotiated for these species as a means of preventing erosion of prices in mid-season.

In conclusion, the Task Force was pleased with the consultations which were extremely helpful in providing information and in identifying issues relevant to our Terms of Reference.

Chapter 4

COMPETITION

Throughout the Task Force's consultations one of the common concerns raised was whether there was sufficient competition within the crab processing sector. The Task Force was told that limited competition is one of the factors keeping crab prices below the prices paid elsewhere. This chapter evaluates the question whether limits to competition are contributing factors which can potentially explain the price differences which the Task Force has been asked to examine. A number of factors contributed to this concern about competition. These factors are:

- restricted entry created by the freeze on processing licenses;
- the perceived domination of the industry by a few large companies;
- the increasing financial ties of fish harvesters to processors;
- the allegation that crab processors had formed a "cartel";
- the recent consolidation of ownership of two Newfoundland and Labrador processing companies; and
- the absence of a functioning auction system in this Province.

Michael Gardner, in a 1989 study on price formation in Atlantic Canadian ports, stated:

> "Industry structure plays an important role in the formation of fish prices in port markets. The characteristics of an industry usually used to define its structure are: the number and relative size of buyers and sellers, the nature of the relationships among them, and industry entry and exit conditions. The number and relative size of buyers and sellers provides an indication of market power and reflects the degree of price competition. Vertical integration and informal ties inhibit the independence of buyers and sellers so that transactions between them may not be subject to

competition from others. Freedom of entry and exit are fundamental to competitive behaviour. The greater the barriers to entry and impediments to exit, the less competitive pricing behaviour is likely to be."

Restricted Entry

The licensing barrier that was created by the Province's freeze imposed in 1989 on the issuing of

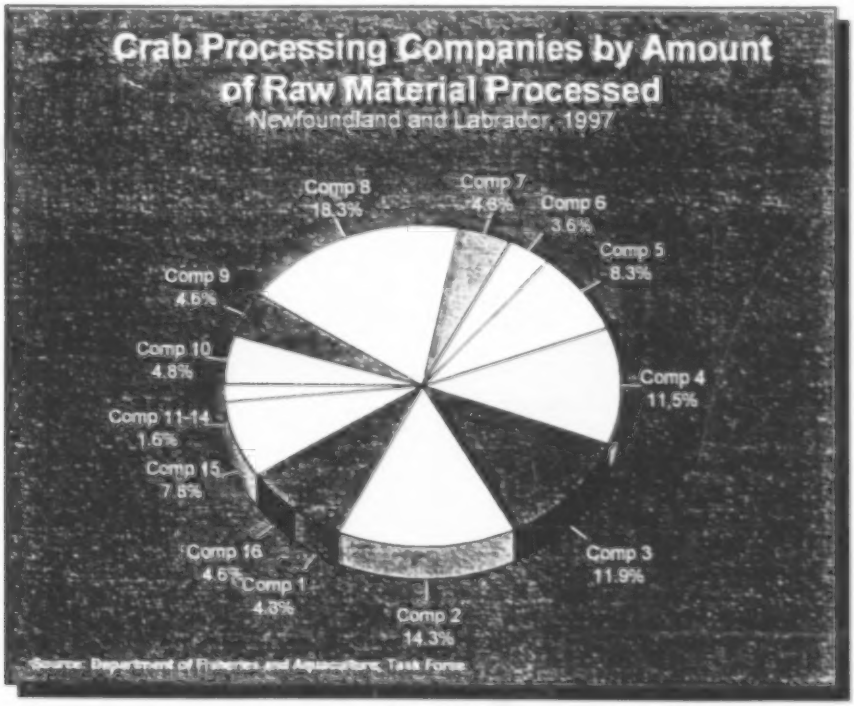

Chart 8

new crab licenses was relaxed in 1996. In that year the number of licenses increased from 19 to 22. The number of licenses has since grown to 36, with the addition of 14 licenses in 1997. Of the 36 licenses, 25 plants operated in 1997. These active plants are owned by 16 different companies. Six

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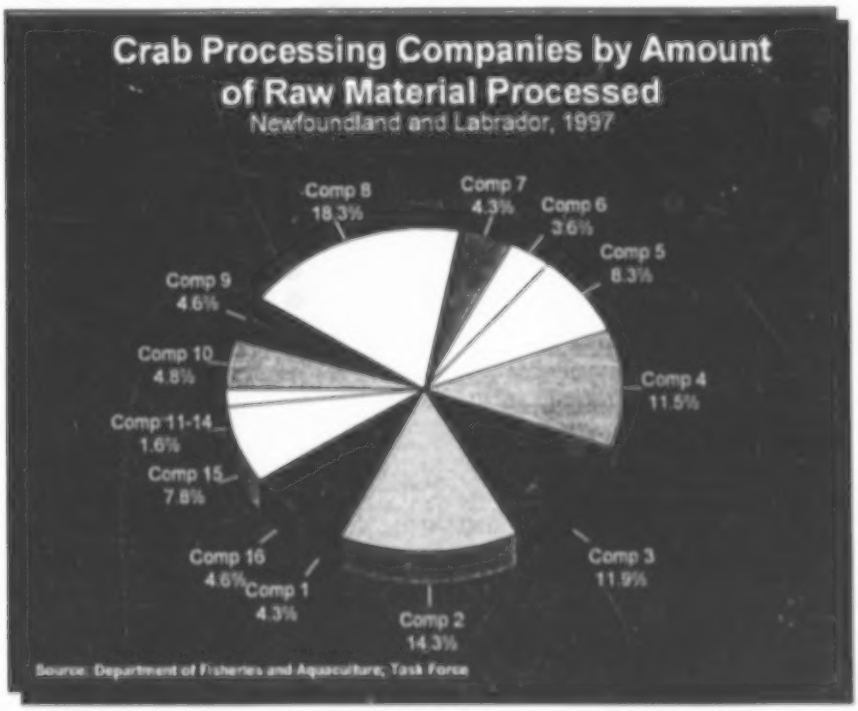

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plants are owned by a single company. Still another company has three plants, and two companies have two active crab processing plants.

The new processing licenses issued in 1997, combined with the potential crab licenses available under the Province's core licensing policy, should help increase competition. This assumes the new licences will become active and that new processors can acquire adequate supplies of capital and raw material.

There are also economic barriers to entry in most industries and the crab sector is no exception. Capital costs are high for the start-up of a new crab facility and companies without adequate cash or capital may find initial costs prohibitive. Estimates range from $250,000 to millions of dollars depending on the equipment and facility already in place.

Further compounding financing problems and entry into this sector are normal business uncertainties. This increases the risk to new entrants and can influence the decision of a firm to enter the industry or even affect the ability of a firm to raise capital.

For new processors, obtaining a supply of raw material may also be difficult. Fish harvesters with strong financial ties to processors or fish harvesters with established business relationships may not be easily enticed to sell to a new plant. New processing licenses should increase the competition for raw material and, from the fish harvesters' perspective, have a positive effect on prices.

Corporate Concentration

It would appear that the level of corporate concentration in this industry may not be as significant as people believe it to be and have suggested. As illustrated in Chart 8, no company or group of companies has processed more than nineteen percent of the available raw material. The concentration of production is such that the four largest crab companies processed 56 percent of the total raw material available and the seven largest companies produced over 77 percent of the total amount of crab. The four smallest companies processed 1.6 percent of the total raw material. The remaining share of the crab resource was spread throughout five companies who each processed between 3.6 and 4.8 percent of the total volume.

The "Cartel"

There is a strong perception amongst fish harvesters that a "cartel" exists within the fish processing sector. This was a recurrent theme in the Task Force's consultations. The Task Force is not aware of any formal collusive agreements that have been executed that would constitute this type of activity. This is not to say that sometimes processors do not act in concert or together to further their economic interests. By its very nature the collective bargaining process in this Province's fishing industry results in a group of processors acting as a single entity to negotiate fish prices. By the same token, the union is another single entity that bargains for a group of fish harvesters.

Price Competition

The Task Force was told of a system of side agreements and extra payments beyond the minimum price set by collective bargaining. The purpose of these side agreements is to encourage harvesting

enterprises selling to one company to remain with that company rather than sell their product to competing processors. The actual amount of the payments and side payments cannot be readily determined, although it is safe to say that this process offers a degree of competition for the larger independent vessels. For fish harvesters fishing with smaller boats, the negotiated minimum price was generally the actual price received.

Financial Ties

The Task Force was advised by both fish harvesters and processors that the processing sector has developed strong financial ties with fish harvesters over the past five years. Such financial arrangements may be used to tie an enterprise to a processing company, and hence, limit the ability of fish harvesters to sell to competing processors. Fish harvesters are becoming more dependent on processors for capital and operating loans. The actual amount of financial assistance being provided to fish harvesters by processors has not been determined.

The scaling down of the Fisheries Loan Board, and its consolidation under the Strategic Enterprise Development Fund (SEDF), appears to have limited the effectiveness of this agency to fish harvesters. In 1996/97, $450,000 was provided to 35 fish harvesters under the direct loan program. This compares with 741 direct loans approved in 1990/91 with a total value of $7.5 million dollars. Similarly, there were four loans worth $800,000 under the guaranteed loan program issued in 1996/97 compared with 34 loans worth $8.5 million in 1990/91.

There has been a substantial change in the criteria used to determine the eligibility of loans to the

harvesting sector. In 1990/91, for example, the Fisheries Loan Board provided financial assistance to the inshore and midshore sectors of the industry and the criteria used to determine eligibility was the ability to pay. Since the consolidation of the Fisheries Loan Board within the SEDF, the agency has become a lender of last resort. Generally, loans are now provided to fish harvesters that have been turned down by conventional sources. Even then, funds are only made available to harvesters that wish to exploit developmental fisheries.

Furthermore, most fish harvesters that the Task Force met with had the impression that the Fisheries Loan Board was no longer in existence and that loans were no longer available. Other fish harvesters expressed the concern that, when approaching the chartered banks for funds, they were required to put their homes up as collateral. Hence they avoid chartered banks and go to the processors instead. By going to processors for funds, the harvesters are choosing to limit their economic independence. In providing these funds to fish harvesters, individual processors are taking measures to ensure their continuity of supply.

The Task Force recommends that the Province, through the Departments of Fisheries and Aquaculture, and Development and Rural Renewal, undertake a review of the current loan financing available to fish harvesters with a view to putting in place an alternative source of funding so that harvesters are not obliged to lose their independence in order to seek funding for operations, repairs and capital improvements. This review should be conducted through a joint government/industry/union committee which will allow full consultation

with all of the stakeholders.

The Government of Canada, through the Department of Fisheries and Oceans ("DFO"), should be invited to participate in this process, with a view to sharing with the Province in providing the means whereby the DFO policy of fleet separation can be upheld through enhancing the financial independence of fish harvesters.

With the growth of the crab fishery, the need for icemaking and for bait, on a regional basis, has changed. The newly emerging crab fishery has a new set of regional facility requirements which need to be met. In the early 1980's, the Province constructed four regional icemaking facilities, in concert with regional marine service centres. These icemaking facilities were built as part of an initiative to monitor and grade fish landings at dockside. It is our understanding that the marine service centres are currently being privatized, along with the associated ice making facilities.

The Task Force recommends that the Department of Fisheries and Aquaculture in consultation with fish harvesters and processors, conduct a review of regional icemaking facilities, as part of an overall assessment of designated landing sites throughout the Province.

The Department of Fisheries and Aquaculture should examine the merits of selling or leasing its icemaking facilities to fish harvesters or organizations of

fish harvesters. In this process, the Department should establish policy guidelines as to whether it is appropriate for these facilities to be turned over to processors, or to other third parties, recognizing the independent interests of fish harvesters. Furthermore, this review should examine at the full range of port services and facilities which should be available to the fishing industry on a regional basis. This review should be conducted in concert with industry stakeholders.

Mergers

In 1997, there was the acquisition of control of one group of processing companies by another. As with any corporate consolidation, such takeovers increase the potential power that they can exert on suppliers. This group of companies now has seven licensed crab plants and a total of seventeen plants, making them one of the largest groups of processing companies in the Province.

Corporate mergers have the potential to create a substantial concentration of market power. The true impact and existence of the level of corporate concentration in an industry can only be determined through a detailed analysis of the financial and production records of processing companies and by a detailed study of port markets and buying practises. The Task Force did not have the opportunity to review the financial records of companies nor did it have the opportunity to study buying practises or look at regional concentrations of processors. Therefore, on the basis of its findings, the Task Force is unable to conclude that corporate concentration and control has reached the level that government must act. **The Task Force recommends that Government continue to monitor the**

levels of corporate concentration in the industry.

Outside Buyers

The Task Force notes that during last year's crab dispute and in a response to a request from the President of the FFAW/CAW, the Minister of Fisheries and Aquaculture allowed outside buyers to purchase crab through licensed buyers. This continued for a period of two months, at which time it was discontinued. Based upon a program of monitoring conducted by the Department of Fisheries and Aquaculture, the Task Force was advised that sales to eleven outside buyers amounted to 1,042 tonnes or about two percent of total crab landings.

The average price paid to harvesters was $1.09, based upon Department of Fisheries and Aquaculture information. This compared with the average 1997 price of 88¢ paid by Newfoundland and Labrador crab processors. Most, if not all of this crab was purchased by buyers from New Brunswick, who shipped this crab alive by road to Port aux Basques, by ferry to Nova Scotia, and then by roadway directly to fish plants in New Brunswick for processing.

The Task Force has attempted to perform a benefit cost analysis of this project in 1997. The purpose of such an analysis would be to determine if increased incomes to fish harvesters, arising from higher prices, were more than sufficient to compensate for the lost employment in the processing sector. The Task Force found that some of the critical data needed to perform a comprehensive analysis were not readily available. The result is that the Task Force does not have the information

it needs to reach a definitive conclusion as to whether the benefits were sufficiently large to offset the costs.

In order to reach a clear conclusion on the benefits and costs of such exports, as to whether the export of unprocessed fish was beneficial to fish harvesters and the Province as a whole there is a need to set clear objectives in advance on the basis of full consultations with the parties. Consequently, the Task Force is of the view that a more controlled pilot project should be conducted in 1998 to seek a definitive answer to the question as to whether the lifting of the restriction on the export of unprocessed crab is in the pubic interest.

The Task Force was informed that most of the sales to outside buyers came from the West coast and Coastal Labrador and had a significant impact on fledgling processors in the area. The Task Force was told that some outside buyers purchased on a selective basis, focusing on colour, freshness and size. Furthermore, we were told that there may have been culling (high grading) at sea, to meet the specifications of these outside buyers. The FFAW/CAW has recommended that the flexibility to sell to outside buyers should continue into the future. The Union takes the position that the effect upon processing jobs was minimal in 1997 but that fish harvesters benefited from the opportunity to increase their returns from the crab fishery through higher prices.

In their written submission to the Task Force on December 16, 1997, FANL said that the effect of allowing outside buyers for crab in 1997 "was of questionable impact with respect to higher prices." They said that "there is a case for allowing outside buyers" but these buyers must be governed by the same rules as all other Newfoundland and Labrador buyers. Almost all of the impact was borne

by FANL members operating on the West coast and in Coastal Labrador. FANL subsequently reported their position, in a letter dated December 19, 1997, which makes the following statement:

> "FANL sees no further requirement to authorize the export of unprocessed seafood from the Province. The two month open regime of 1997 involving the full support of the Provincial Department of Fisheries and Aquaculture and the FFAW/CAW adequately demonstrated that the demand for crab by outside buyers is minimal and that the prices paid are comparable to those paid by Newfoundland processors. Continuing with this activity in 1998 would further reduce employment for processing sector workers, inflate price expectations because of "cherry picking" buying practices by outside buyers and constitute unfair competition for the fledgling crab processing sector along the Province's West Coast."

Given the information available to us, the Task Force does not recommend to Government that the restriction against the export of unprocessed crab be totally removed. The Task Force recommends a carefully planned and monitored pilot project, to be designed well in advance of the 1998 season and based upon the following suggested guidelines:

- **A limited share of landings in each region to be opened for outside buyers. This would ensure that the West coast and Coastal Labrador would not be disproportionately impacted by such a program;**
- **Observers at sea on participating vessels to prevent culling and ensure only sea run crab;**
- **A full cost benefit analysis should be prepared which would assess the cost in terms of lost processing employment against the benefits arising to fish harvesters from any higher prices along with a full assessment of all other benefits and costs;**

- **The destination and product form of the final product to be monitored;**
- **The duration of the pilot project to be the full 1998 crab season;**
- **Mechanisms should be in place to ensure that Employment Insurance premiums, and Worker's Compensation premiums are paid and that outside buyers are subject to the same rules and costs as domestic processors wherever applicable; and**
- **Should such a pilot project be accepted in principle, then a committee involving FANL, the FFAW/CAW, the Department of Fisheries and Oceans and the Department of Fisheries and Aquaculture should meet to prepare a full implementation plan.**

An Auction System

It has been suggested that an auction system would provide a better approach to price setting. Such a system would potentially allow for competition to work more effectively.

Certain factors may make it difficult to establish an auction system in Newfoundland and Labrador. Auctions traditionally work best when they are close to a large consumer market (e.g. Portland in Maine and Hull/Grimsby in the United Kingdom). The large number of landing ports, combined with a low volume, seasonal small boat sector make the creation of an auction more of a challenge. The financial linkages between the processing and harvesting sectors could limit the volume of landings sold on the auction exchange. For an auction system to be successful, there would need to be an alternative source of funding so that fish harvesters would not be dependent upon processors.

Historically, auctions have required physical display centres. The Japanese and most European auctions involve a physical display system. However, Iceland has an electronic auction system. So does Norway. An electronic auction appears most relevant to Newfoundland and Labrador.

In Iceland, the auction system operates in tandem with a vertically integrated harvesting system, which facilitates continuity of supply and production planning for fish plants.

Auctions are common in the marketing of a variety of commodity products. In a traditional auction system, the auctioneer takes bids on each lot and sells the product to the highest bidder. In some cases, prices are bid upward through successive rounds of bid increases, until the highest price is reached. This is the English auction system. In the Dutch auction, the auctioneer names an opening bid and continues to decrease the price until a bid is received. It is the Dutch auction which is used in Iceland. In the case of a traditional auction, the auctioneer acts as an agent for the vendor and is paid a commission by the vendor from the proceeds of the sale. In the Icelandic system, the commission is paid equally by the buyer and the seller.

The key feature of an auction system is that it will achieve the highest possible price for the commodity by allowing for the full interplay of market forces. The maximum value is achieved as a result of forces which bring supply and demand for the particular commodity into balance. The resulting price is a function of the amount of competition among buyers, the size of the lot being sold, and its quality.

The Task Force commissioned the Centre for Aquaculture and Seafood Development at the Fisheries and Marine Institute of Memorial University of Newfoundland and Labrador ("the Marine Institute") to undertake a study into quality issues in the Newfoundland and Labrador crab industry. The Task Force asked the Centre to comment upon auction systems and their applicability in the Newfoundland and Labrador fishery. The Task Force judged the comments provided by the Centre to be extremely useful. The following quote is taken from the report:

> "The Newfoundland" fishery is characterized by the highly organized nature of its workforce. Membership in the FFAW/CAW is mandatory for active participation in the harvesting sector. On the surface, this appears to be a paradox. Each harvester is identified as an independent self-employed individual for taxation purposes, and yet from an industrial relations perspective, is a member of a collective bargaining unit, the same as any other organized employee workforce. This situation evolved in order to give individual small enterprises and individuals a level of negotiating power when dealing with larger business enterprises, vis a vis the processing sector. This is an atypical situation when one considers the implementation of an auction system. The vendor is generally a commercial enterprise, or individual, with complete independence in terms of how they conduct their business. In this regard, if a typical auction system were implemented in Newfoundland, the price that a harvester received for their catch would be dependent upon the market conditions at the time of sale, not upon a negotiated price, arrived at through the collective strength of the bargaining unit."
>
> "From a processor's perspective, it has been stated by FANL, the organization representative of this group, that the price arrived at for fish through collective bargaining, is a lowest common denominator price, based upon average quality. Auction systems achieve the maximum price for a particular commodity at a given time. Therefore, the implementation of such a system would in all likelihood result in an increase in the prices paid for raw material. In addition, whilst not readily admitted to, many processors exercise a high level of control over some harvesters through extending financing for the upgrading and operating of their vessels. This indebtedness ties the harvester to supplying a particular processor with the catch. Under an auction system, the catch would be sold to the highest bidder, not the financier of the operation."
>
> "The implementation of an auction system should result in an improvement in quality

of raw material, since the price paid is truly reflective of the quality delivered, and an increase in the prices received for fish."

"From a processor's perspective, purchasing raw material through an auction house would enable them to better control their buying practices to match processing capacity, and enable them to buy crab of a quality which would meet their market demands. For example, if producing crab meat, colour, scarring and encrusting organisms would not be a critical issue, whereas, if producing crab for the Japanese retail section market, these would be critical, but a higher price would have to be paid for suitable raw material. In addition, the logistics of collection and trucking would be simplified, as it would be a conscious decision as to where sufficient raw material was purchased.

"A free auction system could be operated in conjunction with a fixed negotiated price system. A harvester could opt to use one or the other for any particular landing. If the harvester decided to sell to a particular processor under the fixed price, then this would be permissible. However, if that individual opted to sell through the auction system they would receive whatever price could be achieved for the catch. In order to encourage participation through mitigating the inherent, and perceived risks, it is suggested that a minimum price be fixed, which any purchaser must meet, provided that the lot was of minimal acceptable quality in terms of dead and critically weak crab. If this initiative was implemented, and the auction system achieved the results which typify auctions worldwide, the benefits to harvesters who conscientiously handle their catch would quickly become evident, and the processors would improve their profitability through improved quality, and market access.

"Although this is a simplistic review of the realities surrounding an auction system for the crab fishery, and does not address all the practicalities required, it is a constructive argument for there being means whereby such a system could be tried and tested in the real world, without radically changing the socio economic structure of the Newfoundland fishery overnight."

The Centre goes on in its report to speak to the issue of electronic versus physical auctions and argues in favour of the introduction of an electronic auction, as follows:

"Auction houses, in the traditional sense, physically consolidated product under one roof for personal examination by the buyer, and conducted business at this fixed site. In today's world of information technology and communications, this physical need has in many ways been eliminated. It is now possible to conduct bidding at arms

> length, and in real time. There are advantages from a purchaser's perspective in arms length bidding in that their identity can be protected if required, and therefore their competitors are unaware of who is buying what quantities of raw material, and what price they are paying. This encourages competition amongst buyers, which ultimately improves the prices received by the auctioneer. Providing that the buyer can be made aware of the quality of product for sale, the quantity of product for sale, and it's physical location, then the bidding can be conducted through electronic means."

A number of those who have commented upon the possibility of an auction system in Newfoundland and Labrador have argued that it would apply only to larger vessels and that smaller boats would not be able to participate in the auction. When the Task Force visited Iceland we found that the small boat sector, under 35 feet, participated fully in the auction system in areas where an auction was available. The report from the Centre addresses this important question as to how the small vessel fleet can fully participate in the auction system. In light of the perceptive comments offered by the Centre, we continue to quote as follows:

> "Larger vessels, with landings in the order of tens of thousands of pounds, and with landing times twelve hours or longer after completing fishing, could have their loads auctioned off, based upon their hails, before they physically arrive in port. (This system was tried and tested by the provincial government when it operated a middle distance groundfish fleet. Prices realized for the fish were far greater than the negotiated prices determined through collective bargaining). It would be possible for smaller vessels, landing at designated landing sites, to submit hails to the auctioneer through a port agent. Such landings which would normally come from a common fishing area, and be of similar intrinsic quality, could be consolidated into larger lots providing that they were of similar condition in terms of liveliness, time from capture, and handling and holding history. This would have logistical and "scale of economy" benefits, for any buyer, and should result in a higher price being recognized for the lot. This would also encourage peer policing of harvesters, since no "selling" group would permit their reputation and price received being jeopardized by the incorporation of poor quality product in their lot. Under the assumption that auctions would reduce the overall numbers of lots of crab being moved around, the associated transportation infrastructure required could be rationalized. Buyers could use their own transportation to collect crab from the point of purchase, or the auction house could provide transportation services by delivery of crab to the limited number

of processing operations. There is also a business opportunity for independent transportation companies to organize a distribution system. This would involve shipping, and transhipping consolidated landings, and individual lots for delivery to processing operations. This system was highly effective in the distribution and delivery of fresh fish in the British fishing industry when it was based upon fresh landings, and covered a geographic area similar in size to Newfoundland. Lots of fish as small as twenty pounds could be purchased by telephone in the north of Scotland, and delivered to a plant in the south of England in less than 24 hours.

"The logistical problems associated with operating an auction system superficially appear to be extensive, and perhaps prohibitive. However, by the application of modern technologies, and diligent planning, these are not foreseen to represent a major hurdle if there is a desire to operate an auction system in the Newfoundland fishery.

"In summary, there are a number of precedents and models which indicate that an auction system would have a significant positive impact on the prices harvesters receive for their catch, (providing that it is handled with due respect), and the quality of products emanating from the Newfoundland fishery. This in turn would increase the prices realized, and the market access by Newfoundland seafood processors. The implementation of an auction system would represent a radical change in the structure of the Newfoundland fishery, and concomitant changes in the control and influence of the fishery by incumbent vested interests. It is human nature to resist change, particularly when the unknown consequences are predicted to have major impacts on the status quo. Therefore, it is unlikely that an auction system will be readily accepted by the industry at large. It would only be achievable through legislation or gradual acceptance. The former process is driven by societal will and/or need. In this case such a will cannot be identified. Therefore the only perceived route is through gradual acceptance. This may be achievable through the introduction of a pilot scale auction, which would enable the realizable benefits to be demonstrated in real terms."

FANL have taken a cautious approach in endorsing an auction pilot project. They take the position "... that more definition and consultation are needed prior to open endorsement." While they believe open markets and auctions represent efficient mechanisms for price setting, "... this approach can only be meaningfully pursued by dealing with the extensive financing of harvesters by processors first and thereby providing for free and open competition on a level playing field."

The FFAW/CAW have also expressed cautious support for an auction system. In addition to the ties between individual fish harvesters and processors, the Union believes that the prohibition of export of unprocessed crab/fish would inhibit the level of competition at an auction. Both the FFAW/CAW and FANL believe that 3Ps and 4R 3Pn cod represent the best prospect for testing an auction system beginning in 1999. This is because of the large number of buyers and sellers in the cod fishery and the wide variety of product forms in which cod is used. The Task Force accepts this position and, accordingly, proposes that a pilot project be designed for cod.

The Task Force recommends that planning and consultation begin as soon as possible to undertake an auction based upon the following considerations:

- **The auction pilot to begin in 1999 or in 1998, if at all possible;**
- **The initial focus to be cod in areas 3Ps and 4R 3Pn;**
- **The auction to be conducted electronically, using a hail at sea system;**
- **Proposals to be called for an independent company to operate the system (the Fisheries Resource Centre would be free to submit a proposal, as suggested in the supplementary report prepared by the Centre for Aquaculture and Seafood Development of the Fisheries and Marine Institute of Memorial University.);**
- **Appropriate legislative changes should be made to exempt the pilot auction from the provisions of the Fishing Industry Collective Bargaining Act, while ensuring the proper deduction and remission of Union dues by the auction house; and**
- **Expansion of the pilot project to other species could begin as soon as feasible.**

No attempt should be made to prejudge the volume of landings which would flow through the auction. In Iceland, after ten years of operation, 35 percent of all landings are sold by auction. The co-existence of an auction, along with other price settlement mechanisms, is seen as an advantage to the industry, providing flexible options for the exercise of choice by both buyers and sellers.

Chapter 5

QUALITY

One of the central themes that has emerged from the Task Force's study of the Newfoundland and Labrador fishing industry and from our consultations with fish harvesters, fish processors, , their representatives and buyers abroad has been a concern with fish quality. This issue is of particular importance to the Task Force because quality is a potentially key factor influencing the price differences which the Task Force has been asked to explain and evaluate in our Terms of Reference. In the minds of most fish harvesters, there is a common belief that fish processors use quality related issues and concerns as a means of downgrading the price that they are paid for their product. They also believe processors pursue a volume production related marketing strategy that is indifferent to quality and that they process rejected product when inspectors are not present. Fish processors, on the other hand, say that fish harvesters need to improve the quality of the fish that they land, thereby allowing them to produce a higher quality product that may command a higher price in the marketplace.

On the whole, it was agreed by both processors and harvesters, that progress was made in 1997 by fish harvesters in bringing a better quality product to port. They stated that better handling practices, trip limits on larger vessels and better icing of the catch accounted for this. Fish harvesters are to be commended for their efforts in this area. As well, it must be noted that the Province increased its inspection efforts last year. But quality concerns do not end in a single year. They must continue to be reflected at every stage of the process, from point of harvest to point of processing. Whether the product is crab or fish of another type, one thing is clear, that the product will suffer if there is

any weak link in the quality chain. The dynamics of the world marketplace have so changed in recent years that this Province cannot afford to produce and market one pound of inferior quality crab or other fish products. The time has come to remove any doubt as to the reputation of Newfoundland and Labrador fish products, and to ensure that the name and words "Product of Newfoundland and Labrador" on a package of fish are seen by world markets as an assurance of that fish's quality.

Appreciating these facts, the Task Force commissioned a study by the Centre for Aquaculture and Seafood Development of the Fisheries and Marine Institute of Memorial University of Newfoundland (the "Marine Institute") into quality issues in the Newfoundland and Labrador crab industry. While the subject matter of that report was crab, the concepts contained in it, with simple modifications, could be applied to all species. A new beginning is needed to address these concerns.

The Task Force recommends the development of a "partnership for quality program" between fish harvesters and fish processors, sanctioned by Government, to ensure that fish quality is maximized at every step of the process, from crab pot to table.

The adoption of such measures would benefit everyone engaged in the business of fish harvesting and production. The existence of this project, and of our intention to "make it right" when it comes to all fish production, should be made known through an industry wide promotion and marketing campaign. The Task Force also recommends the following measures:

- **"A joint FANL and FFAW/CAW working group be activated to address quality, marketing and pricing mechanisms.** This was detailed under Item 9 of the 1997 collective agreement for snow crab prices. The only way that significant improvements in quality and consistency can be achieved is through industry wide participation in any actions taken. It is therefore essential that all parties be in agreement, which is only achievable through a consultative process.

- **It is recommended that a Premium Quality (i.e., Seal of Excellence) Program for snow crab be developed by industry stakeholders, with identified criteria certifying that recognized industry participants, i.e., fish harvesters, transporters and processors have achieved that level of competency, on a consistent basis, as prescribed in that program, to qualify for this designation.**

- **The Task Force recommends that a general and ongoing education program be developed for all key personnel, including fish harvesters, fish transporters, fish processors and plant workers.** The purpose of such an education program would not only be to improve knowledge of best practices, but also to instill an appreciation of the importance that each industry stakeholder achieve the highest quality in order that the value of the crab product may be maximized.

- **Consideration should be given by Government to appointing a fully dedicated individual acceptable to the parties and reporting to the Minister of Fisheries**

and Aquaculture to facilitate, and oversee discussions with stakeholders on the above noted matters and to assist them in implementing the same.

- **Based upon the findings of the Marine Institute and our own consultations, the Task Force has prepared a more detailed report on quality which is found in Appendix A to this report. The Task Force recommends that the suggestions contained in the Appendix be the basis for a series of consultations with the parties.**

The implementation of these measures will greatly enhance the ability of fish harvesters, fish handlers and fish processors to produce a quality product. They should, in the Task Force's opinion, be implemented without compromise. Government regulatory intervention should support the parties in this process. Indeed, the Task Force believes that the common sense and common interest of the parties in implementing these measures are so compelling that they should be prepared to agree upon them, or other similar measures achieving the same purposes, without government intervention. In the Task Force's opinion, anything less than a holistic approach to quality and the challenges that our industry faces cannot succeed.

A consequence of implementing the above measures will be to send a strong signal to the world marketplace that quality is paramount when it comes to crab production in Newfoundland and Labrador. With such commitment on the part of all industry participants, our industry can move forward to occupy its proper and optimal niche in the world marketplace.

Our Task Force recognizes that our primary focus was not quality. However, quality and the price of Newfoundland and Labrador fish products are so closely linked that it is essential that further quality improvements be made if maximum prices are to be achieved.

The Task Force proposes that the recommendations contained in this Chapter and in Appendix A be the subject of full consultation between the parties.

Chapter 6

MARKETS AND MARKETING

In our efforts to evaluate the reasons for the differences between crab prices paid in Newfoundland and Labrador and prices paid in other crab fishing provinces and countries, the Task Force decided to focus on quality and on marketing. Two of the main sources of market and marketing information were (a) participation by the Chairman of the Task Force in a Mission to Japan led by the Minister of Fisheries and Aquaculture in November and (b) a report prepared by MaryLou Peters in consultation with Nilo R. Cachero (the "MLP Report") commissioned by the Task Force. This Chapter draws upon these two sources, along with other information, including the presentations by the FFAW/CAW and FANL to the conciliation board appointed early in 1997. It will begin with a review of the positions taken by the parties in their presentations to the Task Force.

The FFAW/CAW ascribes considerable importance to marketing as a factor contributing to the price differential between Newfoundland and Labrador and other areas of Eastern Canada for snow crab. They refer to ". . . the willingness of the processors to accept a position at the low end of the market and [to] maintain their margins by paying low prices to fishermen".

FANL disagrees that marketing problems are the cause of lower prices. In their submission to the Task Force, dated December 16, 1997, they made the following statements:

> "FANL has four member firms that operate outside Newfoundland which collectively account for well over $1,000,000,000 annually in seafood sales. That these firms have achieved these sales levels and are intense competitors in other Provinces ought to attest to their marketing and business acumen. That these four companies appear to hold no advantage

over other Newfoundland and Labrador based crab processors also speaks to the ability of these companies."

FANL also stated:

> "It is also noteworthy that the Atlantic Queen marketing consortium is active in Newfoundland and New Brunswick. Their 30 years experience in marketing snow crab is not exclusively to the benefit of their New Brunswick members."

FANL goes on to say that:

> "Clearly the processing sector needs to better inform harvesters of the challenges encountered in marketing, actions taken to promote Newfoundland seafood and successes realized. It is useful to note that the industry was highly successful in marketing 1997's record production. This was achieved not simply by accident or by a willingness to accept low margins."

While Newfoundland and Labrador is a major player in the Canadian snow crab industry, we are a relatively small player in the international market. Newfoundland and Labrador is a price taker and not a price maker. Total landings of all crab species in the world are about 1.3 million tonnes and landings in Newfoundland and Labrador represent about 2.6 percent. Taking all Canadian and Alaskan landings of snow crab in 1996, Newfoundland and Labrador accounted for about 39 percent of all Canadian and Alaskan landings of snow crab. Newfoundland and Labrador's quota has increased significantly in recent years from 10,100 tonnes in 1989 to 44,600 tonnes in 1997.

Apart from the enormous increase in the quota over the past ten years, another profound shift in the Newfoundland and Labrador snow crab industry occurred in the mid 1990's. Prior to that time most production had been in the form of crab meat, destined mainly for the United States market. The Japanese market was of minor importance to us while the Japanese obtained their imports from the Gulf Region of Atlantic Canada and from Alaska. This changed with the collapse of the Alaskan

crab fishery in 1995. The Alaskan quota dropped from 140,000 tonnes in 1994 to 56,000 tonnes in 1995. The result was that the Japanese market was opened up for Newfoundland and Labrador and this encouraged a diversification in product form from meat to shell-on product for the Japanese market. At the same time, Japanese prices escalated dramatically, which led to prices paid to harvesters in Newfoundland and Labrador rising from $1.41 per pound in 1994 to $2.47 in 1995.

The drop in the crab supply from Alaska had a disproportionate impact on prices in Japan. The prices paid in 1995 were not truly reflective of market conditions and when the bubble burst the subsequent decline in prices was abrupt and dramatic. However, Newfoundland and Labrador has maintained a strong presence in the Japanese market, with our share of Japan's frozen snow crab imports rising from five percent in 1992 to 29 percent in 1996. Newfoundland and Labrador has also maintained and, this year, expanded it's place in the United States crab meat market, while improving it's position in the Far East and continuing a small presence in the European market.

There may be a perception, in some quarters, that Japan is our only market or major market. Not so. The United States continues to be a major market and its purchases in 1997 were twice those of Japan measured in raw material equivalent . The United States market consumes most of our meat production, while the Japanese purchase exclusively shell-on product. Yet, the United States is a significant market for shell-on crab as well.

In 1997, Newfoundland and Labrador's exports to Japan were below those of the last few years. This was because of general economic conditions, including the falling yen. Alaska's snow crab

fishery has been recovering, while shipments of crab from Russia have also increased. The continued recovery of the Alaskan fishery in 1998 will be a factor for the future, as will the economic uncertainty in the Far East. Demand for seafood in Japan will likely remain weak and this could significantly affect crab products, which are at the high end of the market.

In the United States, the market for crab meat has been weak but the section market has been expanding. Consumers are shifting from shrimp, whose supplies have been curtailed, to crab. Warm water farmed shrimp has been affected by flooding as a result of El Niño-related typhoons and floods in South East Asia and Central America. Shrimp prices have risen and consumers have been substituting crab in its place.

Another reason to be optimistic about the United States market for crab is that the United States economy is expected to be strong in 1998 and this is generally good news for seafood as a whole.

Returning to the Japanese market, Newfoundland and Labrador crab competes with crab from Alaska and from the Maritimes and Quebec. Within the Japanese market for frozen sections, there are three distinct sectors which are differentiated by the quality of the product which is acceptable and by the market value of that product. Each market sector has particular product specifications. These market sectors are, in descending order of price, as follows:

- The speciality market for the high end food service;
- The food service and retail market; and

- The reprocessing market.

At the high end of the Japanese market for snow crab is a speciality market focusing on the Sea of Japan, which demands the highest quality of crab. This market, which is comprised mostly of luxury restaurants and spas along the Northern Sea of Japan, consumes about 6,000 tonnes annually. This speciality market is highly demanding and requires a bright reddish-orange colour with white bottom. Other characteristics demanded by this market are an attractive shell, without scarring, along with large size crab. The market will only accept snow crab which is free from intrinsic defects such as scarring, leech eggs and moss, is bright reddish-orange in colour and preferably greater than 8 ounces per section. The preferred product is the crab produced in Northern Japan or, alternatively, crab from the New Brunswick area of the Gulf of St. Lawrence. In order to be acceptable for this market the product must be cryogenically frozen, using CO_2 or N_2. The Report of the Centre for Aquaculture and Seafood Development estimates the incremental cost of cryogenic freezing to be about thirty to forty cents a pound.

The principal market in which the Newfoundland and Labrador industry seeks to compete is the retail and food service sector. This market was supplied, up until 1994 by the Alaskan fishery. Newfoundland and Labrador snow crab, particularly from NAFO Area 3L, has intrinsic characteristics comparable with crab from Alaska. Some Japanese buyers indicated a preference for the taste of Newfoundland and Labrador crab compared with it's Alaskan counterpart. However, Newfoundland and Labrador crab is generally smaller, with the bulk of production in the 3 to 5 ounce and 5 to 8 ounce section ranges, with lesser amounts in the greater than 8 oz. range. Alaska

typically supplies sections in the 8 to 10 oz. size category with limited production in the size range of 10 to 12 ozs. and some in excess of 12 oz. In 1997, the Alaskan fishery exhibited a smaller size crab than it did in previous years. This is typical in a fishery which is recovering from a collapse and where crab is being harvested as soon as they are recruited into the fishery. This means that Newfoundland and Labrador can presently compete with Alaska in terms of colour and size as long as our quality is comparable. The major quality differential is freshness, along with a perception in the marketplace that Newfoundland and Labrador product is not as good as Alaska product. There are good prospects that Newfoundland and Labrador can compete with Alaska, given appropriate quality control measures.

The third component of the Japanese market is the reprocessing sector. This is a relatively large Japanese market for snow crab sections which are destined to be reprocessed for meat extraction. In 1996, about one-third of Newfoundland and Labrador's exports to Japan went into this market. Due to the high labour costs in Japan, this product is shipped into low wage Asian countries, mainly China, where the meat is extracted and frozen. This product is then imported into Japan.

The MLP Report examines the data on wholesale prices in Japan for frozen snow crab, for the period 1995 to 1997. These data show consistently higher prices for product originating in the Maritimes and Quebec. There have been certain periods when Newfoundland and Labrador product has competed quite well against Alaska product. However, prices for Newfoundland and Labrador products appeared to move downward as the end of the year approached. This may be the result of short term supply outstripping demand as more quantities of Newfoundland and Labrador products

became available. The marketing study confirms that Newfoundland and Labrador products receive lower prices than those paid for products from Quebec and the Maritimes. However, the data do not suggest that the price discrepancy is indicative of a marketing problem. What it does show is that the different sectors of the crab market in Japan are quite distinct and it is extremely difficult for Newfoundland and Labrador product to gain acceptance into the high end speciality market.

The data on crab landings in the MLP Report show that prices in Newfoundland and Labrador have been consistently lower than those in other parts of Atlantic Canada, in Quebec and Alaska. During the 1994-96 period, Newfoundland and Labrador prices paid to fish harvesters have been roughly $1.10 per pound less than the New Brunswick average. This equates with the differential at the product level where Newfoundland and Labrador's export prices for in-shell crab for Japan were about $1.00 per pound less, on the average, than those of the rest of Canada. The MLP Report concludes that, without more information, it is not possible to draw too many conclusions except to observe that the year to year movement of Newfoundland and Labrador's landed prices have been consistent with the relative prices which Newfoundland and Labrador products received in the marketplace.

The MLP Report provides an analysis of the price disparity between Newfoundland and Labrador sections and competing sections. The report states that:

> "Newfoundland snow crab for the most part does have physical characteristics that set it apart from some other snow crab, particularly from much of the snow crab in the Gulf area of Atlantic Canada. It has been acknowledged by scientists, distinguished between by Japanese buyers, commented on in various studies, alluded to in a number of seafood market

news articles, and generally recognized by many in both sectors of the industry; and one difference is in the colour of much of the Newfoundland crab being not so bright a reddish orange when cooked. That having been said, there is recognition that not all of the areas of the Gulf produce quite the same bright coloured crab (some paler than others) and there are some areas of Newfoundland that crab is not so dull a colour as in other areas."

"In general there appears to be a difference in the size of snow crab in Newfoundland versus that of the Gulf, the Gulf crab being usually larger. . . . While it depends on the market, most often larger sections are preferred so the Gulf snow crab would normally have a size advantage over Newfoundland snow crab."

"For a prime market in Japan the basic natural characteristics for the Gulf crab for the most part would have the things the Japanese market (high end of it in particular) wants. Those things are the bright reddish-orange colour, white bottom when turned over (in contrast to yellowish/green bottom), cleanliness (in contrast to leech eggs, scarring, etc.), and size".

"Obviously, unless there is a dramatic change in the natural characteristics of the Newfoundland crab it does not look possible to eliminate the price gap between the two (the prime of the Gulf crab and the Newfoundland crab) in the Japanese market, nor does it seem possible to reduce it by a great deal."

The MLP report comments on the relationship between Newfoundland and Labrador and Alaskan snow crab:

"In looking at prices of snow crab over a number of years, it is noticeable that the price for Newfoundland snow crab, though lower, in the Japanese market, is closer to that of Alaska than it is to that of the Gulf. The gap is not nearly so large. One reason for that is probably because Newfoundland and Alaska snow crab are said to be fairly similar in colour and size. Where it differs is that the Alaskan snow crab is cleaner, is said to be known to have good meat fill and is known for it's freshness.

"Meat fill is very important as it will give a higher yield in reprocessing and would be a definite plus for Japanese considerations. If Newfoundland is looking towards closing a price gap, then catching the crab when it has full meat fill would seem to be one way to start."

The marketing consultant concludes that the reasons for the price differentials are not related to inadequacies in the way the Newfoundland and Labrador industry markets it's product. Rather, the

differentials are to be attributed to other factors, such as intrinsic characteristics and quality control.

The Task Force accepts the findings of our marketing consultant that the differentials in price paid to fish harvesters for snow crab between Newfoundland and Labrador and other provinces and countries are attributable to intrinsic characteristics and controllable quality factors, rather than to ineffective marketing. These findings were corroborated by other information available to the Task Force including the information obtained by the Chair of the Task Force from participation in the Mission to Japan led by the Minister of Fisheries and Aquaculture.

Chapter 7

REASONS FOR PRICE DIFFERENCES

The Task Force has been asked to evaluate "the reasons for differences between crab prices paid in Newfoundland and Labrador and prices paid in other fishing provinces and countries". There is no question that these differences exist. In 1992, the price per pound paid to harvesters in New Brunswick was $1.00, while in Alaska the price was $0.62, compared with $0.36 in Newfoundland and Labrador. The New Brunswick price was $0.64 per pound higher and the Alaskan price was $0.26 per pound higher than that received by Newfoundland and Labrador harvesters.

In 1995, the price per pound paid in Newfoundland and Labrador went to $2.47 compared with $3.63 in New Brunswick (a difference of $1.16) and $3.24 in Alaska (a difference of $0.77). Taking the average prices for 1994, 1995 and 1996, New Brunswick prices and Alaska prices exceeded Newfoundland and Labrador prices per pound by $1.10 and $0.65, respectively.

As noted in Chapter Six, the majority of the crab from the Maritimes and Quebec goes into a high end speciality market in Japan. The Japanese market specifications are very demanding in terms of large size and bright reddish-orange colour when cooked. The market also calls for freedom from intrinsic defects such as scarring, leech eggs and moss. The product must be fresh and all appendages must be intact. The crab from New Brunswick meets this specification, with most production going into the speciality market. The New Brunswick industry also supplies product to the United States market, in the form of meat and crab sections.

Alaskan snow crab does not meet the demanding specifications of the speciality market in Japan. However, this product has traditionally been the mainstay of the retail and food services market, which is the market in which Newfoundland and Labrador shell-on product has also found a position. Newfoundland and Labrador product has been competing with Alaskan snow crab and it appears to be realistic for Newfoundland and Labrador to reduce the price difference with Alaskan snow crab given that Newfoundland and Labrador crab is comparable in many respects.

During the visit to Japan of the Minister of Fisheries and Aquaculture in November of 1997, the mission was told that Newfoundland and Labrador crab compares favourably with crab from Alaska, except that Alaskan crab is fresher and historically larger in size. This suggests that, with a program of quality enhancement to minimize the time elapsing between harvesting and processing, and with proper temperature control and treatment, the gap can be narrowed, if not eliminated.

While Newfoundland and Labrador has been successful, along with Alaska, in penetrating the Japanese retail and food services market, we have not placed our product in the speciality market. The demanding Japanese speciality market requires intrinsic characteristics that can be met by only a small proportion of the Newfoundland and Labrador harvest. In 1993, Gardner-Pinfold Consulting Economists Ltd. prepared a report for the then Department of Fisheries entitled "The Impact of Newfoundland and Labrador Processing and Licensing Regulations on the Landed Price for Snow Crab." ("The G-P Report"). A pilot project was conducted whereby about 180,000 pounds of Newfoundland and Labrador crab was shipped to the Maritimes for processing. Most of this crab was found to be unsuitable for the Japanese section market, due to it's colour and size. Some crab

may have been suitable but would not necessarily achieve the top prices. In 1997, crab was purchased by Maritime buyers for a two month period when the Minister of Fisheries and Aquaculture removed the export restrictions requiring its processing within the Province. The product from Newfoundland and Labrador went into both the United States and the Japanese section market, although the market destination was not closely monitored.

The G-P Report attributed the price gap to five closely related factors. These were ranked, in order of importance, starting with the most important:

- Physical characteristics of the crab

  Newfoundland and Labrador crab is smaller, not as clean, and when cooked, lacks the bright reddish-orange colour of New Brunswick crab.
- Provincial licensing regulations.

  Buyers' licences are not issued to processors from out of the province. This was seen to be a factor because it restricted competition from out of province buyers.
- Provincial processing regulations.

  In the past there were restrictions on the amount of crab which could be placed into the section market.
- Production costs

  Labour costs in the processing sector are higher in Newfoundland and Labrador than in the Maritimes.

- Harvesting conditions.

  Differences in the quality arising from differences in the timing, speed and condition under which crab is harvested.

The Task Force will comment on whether these factors continue to apply.

Commentary on Physical Characteristics

The Task Force believes that differences in intrinsic characteristics of crab continue to be an important factor in explaining the price differentials. In this report, the Task Force accepts the conclusion that it is the crab's intrinsic characteristics and the price it can command in the marketplace that represent the major factors in explaining the difference in price between Newfoundland and Labrador and the Maritimes and Quebec.

Commentary on Provincial Licensing Restrictions

The G-P Report saw the restriction on the export of unprocessed crab as a barrier to competition. The question is how much competition is needed and can the issuance of new processing licences create the same competitive conditions and the same upward pressure on prices to fish harvesters as the buying activities of outside buyers. Since 1993, when the G-P Report was written there have been a number of new processing licences issued. The number of active crab plants has risen from 18 in 1993, to 25 in 1997. In addition to the 25 active plants there are another eleven licences which have been issued and which have the potential to become active. This would bring the total to 36 active plants. In addition there are another 48 "core" plants which are not licenced for crab but

which could apply for a licence.

As noted in Chapter Four, the reported results of the export of unprocessed crab in 1997 raised a number of questions as to whether the reputed higher prices paid by buyers from the Maritimes and Quebec provided fish harvesters with a real opportunity to achieve a higher return from their catch. The Task Force would like to see a full benefit cost analysis before reaching a conclusion. If there is culling (i.e., high grading) at sea by harvesters selling to outside buyers the comparison of prices received for such high grade product with the price for "sea run" crab is open to question. This is one of the reasons why the Task Force recommends a closely monitored and carefully planned pilot project for 1998, as noted in Chapter Four.

The information available to the Task Force is that, during the two month period when the freeze on the export on unprocessed crab was in effect in the summer of 1997, the amount exported was 1,042 tonnes, at an average price of $1.09 per pound compared with the average price of 88¢ per pound paid to fish harvesters by this Province's fish processors. As well, a number of persons making representations to the Task Force stated they, along with other fish harvesters, had landed their crab directly to buyers in Quebec, Nova Scotia and New Brunswick. However, they were not able to identify for the Task Force all of the persons who engaged in this practice, the amounts shipped and the price received for all such shipments. Certain of them said that relaxing this Province's export restriction actually depressed the price that they received for their fish in other provinces. On the basis of the information before it, the Task Force cannot conclusively determine that the restriction on the export of unprocessed crab is a major factor in explaining the price differential. The recommended experimental project for 1998 would help answer the questions raised by the Task

Force through a full benefit cost analysis which would control for any culling at sea.

Commentary on Provincial Processing Restrictions on Product Form

The industry is virtually free to produce in the form of either meat or sections, as required by the marketplace. The previous restrictions on section production have been relaxed.

Commentary on Production Costs

The Task Force has assembled data on processing labour rates in Newfoundland and Labrador compared with New Brunswick which confirm that there is a significant difference. However, there may be offsetting economies of scale in Newfoundland and Labrador plants. Furthermore, it should be noted that Maritime plants use cryogenic freezing technology, which adds substantially to the processing cost. In the absence of processing cost data for both Newfoundland and Labrador and New Brunswick, it is difficult to assess whether any part of the price differentials can be attributed to differentials in wages paid to plant workers in each Province.

Commentary on Harvesting Conditions

The Task Force believes that quality issues relating to the timing and speed of the fishery and the conditions under which crab are landed are indeed important factors. However, the broader issue is one of quality as is noted in Chapter Five covering all aspects of harvesting, transportation and processing. It is this broad issue which, in the opinion of the Task Force, is the second biggest factor, after intrinsic characteristics, which explains the price differentials noted above.

The Task Force believes that there are three factors which account for the continued price difference

between Newfoundland and Labrador and the Maritimes, and between Newfoundland and Labrador and Alaska. First, in the case of the differential between Newfoundland and Labrador and Maritime prices, the intrinsic characteristics differ significantly. These are subject to remedial action to a limited extent. Removal of leech eggs and barnacles is now possible, by mechanical means, but this adds to the cost. However, colour, scarring and size are not really amenable to change.

The second factor relates to the handling and treatment of Newfoundland and Labrador snow crab. The Task Force believes that this is one of the major reasons for the price differential, namely, that the quality treatment of Newfoundland and Labrador product, up until recently, has been below the standard of some of our main competitors. This problem, however, can be corrected, in a fashion which is beneficial to all parties. By taking appropriate action, the Newfoundland and Labrador snow crab industry can raise the market return and the image of the Newfoundland and Labrador product over a reasonably short span of time. It is by quality improvement that Newfoundland and Labrador can move it's product mix toward the upper end of the spectrum. This is an important avenue whereby the price differential between Newfoundland and Labrador and Alaska can be reduced or eliminated.

A new beginning is possible for the Newfoundland and Labrador snow crab industry through the pursuit of the following strategy to improve quality:

- An early start to the fishery achieved through an early resolution and settlement of prices;
- A modulation of the peak in landings, by managing the fishery so as to maximize both

conservation and quality concurrently; and

- A holistic quality improvement program following the suggestions set out in Appendix A to this report.

The third factor which explains the price differentials relates to competition. This issue of competition has a number of components. In the past, the limited number of plants may have been an issue restricting competition when there was a freeze on the number of licences. This issue has effectively been addressed by changes in licencing policy since 1996.

The Task Force notes that there is nothing to prevent processors from the Maritimes and Quebec from acquiring a crab plant in Newfoundland and Labrador.

Another barrier to competition arises from financial dependence of harvesters upon processors. In order to encourage a fully competitive industry it is important to provide the means whereby harvesters can exercise freedom of choice and not be bound to particular processors. It is for this reason that the Task Force has made recommendations in Chapter Four whereby harvesters can be provided with alternative sources of funding without having to rely on processors. The Task Force also believes that the development of an auction system can play an important role in facilitating high quality and also allowing harvesters to receive maximum value for their catch.

The Task Force finds that the main reasons for the price differences between prices paid in Newfoundland and Labrador and prices paid in

other crab fishing provinces and countries, in order of importance, are as follows:

- the intrinsic characteristics of our crab, compared with other areas;
- quality differences; and
- competitive factors.

The Task Force has proposed a number of measures in this report to improve the level of quality and to increase competition. The Task Force notes that measures have already been taken by the Minister of Fisheries and Aquaculture and by the parties to assign a high priority to a broadly based program of quality assurance and that barriers to new entrants into the crab processing industry have been reduced through the new licensing policies put in place by the Minister.

Chapter 8

PRINCIPLES FOR DESIGN OF A NEW MODEL

In 1988, the fish harvesters of the Province demonstrated by secret ballot in a vote conducted under the auspices of the Labour Relations Board that they wished to have the FFAW/CAW represent them as their bargaining agent in all matters related to collective bargaining. As stated earlier in this report, the FFAW/CAW is the officially recognized bargaining agent for all fish harvesters in the Province, subject only to the exemptions outlined in the certification order.

In the studies conducted by the Task Force, as well as in the visits to other jurisdictions and consultations with other countries, the Task Force learned that Newfoundland and Labrador is the only jurisdiction, to the best of our knowledge, where a single union is certified to represent all fish harvesters.

The Task Force has analysed a number of options for a new model of collective bargaining in the Newfoundland and Labrador fishing industry. These ranged from an auction system similar to the current practice in Iceland, to a fully open market system such as exists in areas like Nova Scotia, to a price settlement board like that in Quebec. In the final analysis, the Task Force determined, through our consultations, that any new model would have to recognize the wishes of the fish harvesters to be represented collectively as one unit, as demonstrated in their vote in 1988. Accordingly, the proposed new model is based upon the present collective bargaining regime, with a number of important modifications of the current structure. However, it maintains the right of the parties to bargain collectively.

For any labour relations process to work effectively, it is absolutely imperative that there be a solid foundation of trust between the parties engaged in the process. Indeed, the labour relations process is built on a recognition of the fact that, in order for it to work, both sides, while recognizing the somewhat unusual dynamics of the process itself, have to place a level of confidence and trust in each other in reaching an agreement. Trust is not easily attained, particularly where there has been a history of mistrust. It requires a strong commitment on behalf of all parties engaged in the process.

Another key component of trust and building trust is the willingness of parties to listen and be open about their respective positions on issues that are the subject of collective bargaining. This means being willing to share with the other side the information necessary to substantiate a bargaining position. Collective bargaining, by its very nature, lends itself to a certain amount of posturing by both sides, particularly on key issues. This does not mean, however, that there cannot be a full and open process whereby both parties are able to "place their cards on the table" in the interest of attaining a fair and equitable settlement of the outstanding issues.

It is necessary, therefore, that in the design of a new model for collective bargaining in the Newfoundland and Labrador fishing industry, consideration be given to designing a process which affords full opportunity for open discussion of the relevant issues. This process will ensure each party has an appreciation of the other's position and reasons for taking such a position. The model must also provide an opportunity for both parties to engage the services of reputable professionals for fact finding purposes on issues affecting the industry.

The fishing industry is extremely dynamic and complex. The issues affecting a particular fishery today may be completely different tomorrow. Accordingly, it is vital that the process be fluid and allow for input from independent sources on an as needed and go forward basis.

It is widely known in the labour relations field that the best collective bargaining agreement is one which has been attained by the parties themselves without the involvement of a third party. If there is a need for the involvement of a third party, it should be in a supportive role to the parties and to the process. The third party should also be, to the fullest extent possible, someone who is freely chosen by the parties and who has the trust and respect of both sides.

The Task Force held numerous discussions with key industry representatives during our design of a new model for fishing industry labour relations and collective bargaining. As a result of these discussions we committed to designing a model that would be, to the greatest extent practical, driven by the stakeholders and minimize the role of government. The stakeholders will be responsible for setting the time limits for discussions to occur and will have the freedom to select the core of professionals who will play a supportive role to them in their negotiations. The parties will also be free to agree on the sources of independent factual information to assist them in the interest based component of the process, leading up to positional bargaining and final resolution of outstanding issues, if necessary.

As mentioned earlier, the fishing industry is an extremely complex one. For any process to work it has to be fluid and be able to adjust to the dynamics of the industry. Collective bargaining on prices

and other issues for one species may bear no resemblance whatsoever to another species. For example, snow crab issues may be completely different from lump roe issues. The new model applies to all species.

The principles which have guided the Task Force in the design of the new model were derived from our review of approaches taken in other jurisdictions. They also evolved from our consultations with stakeholders. They are as follows.

First, there must be a disciplined process whereby both sides are committed to adhere to strict time limits which will allow sufficient time for interest based discussions of issues, positional bargaining and a final binding settlement to occur, if necessary. This should be done within a structured time frame, set out at the beginning of the process, by the parties. This will enable the parties to work together through the various stages to ensure that the collective bargaining process is completed and a price for a particular species of fish is set in time for the projected target opening date for the fishery. The time schedules will be different for different species. However, they must all provide sufficient time for each stage to be completed effectively.

Second, the model has to be interest based. The complexity of the industry demands sufficient time be allocated for the parties to identify and discuss issues in an informal, interest based setting without the traditional rules of positional bargaining coming into play. In this setting, both sides can address and discuss issues which are likely to have an impact on a particular fishing season.

Third, the parties must be free to explore any form of alternate dispute resolution mechanism they feel appropriate to address issues which may arise in the industry. The only requirement is that a settlement mechanism for disputes, including disputes on prices, be put in place to ensure the commencement of the fishery at the most opportune time for fish harvesters, processors and all other stakeholders.

The model proposed in the next chapter draws from a number of systems studied by the Task Force. It contains elements from each of the systems. It is very much, however, a model based on the particular circumstances of the Newfoundland and Labrador fishing industry. It keeps faith with, and is fully consistent with, the guiding principles set out in Chapter One. It is a model which has been designed taking into account many of the key concerns and ideas expressed by the stakeholders with whom we met during our deliberations around the Province. We are hopeful that, with the necessary support and full commitment of the parties, the new model will serve as an effective and positive agent of change bringing greater stability and structure to the way we approach and deal with fishing industry collective bargaining in this Province.

Chapter 9

NEW LABOUR RELATIONS MODEL

The proposed model calls for the parties to engage the following mechanisms: first, a joint technical committee representing the parties; second, a facilitator appointed jointly by the parties; and third, an arbitrator-in-waiting also appointed jointly by the parties.

The proposed model for collective bargaining in the fishing industry will essentially comprise the following:

- An interest based, fact finding and issue identification phase, where a joint technical committee appointed by the parties, with the support of a facilitator, engages in a full and open dialogue to discuss key issues that are likely to affect the particular fishery under discussion. No positional bargaining will occur during this phase.
- A collective bargaining phase, where the representatives of the parties on the joint technical committee, following the conclusion of the interest based phase, would if necessary, bargain and attempt to agree mutually on conditions to be contained in a collective agreement.
- A mandatory dispute settlement phase where the parties must, if a collective agreement is not reached in the interest based phase, or in the collective bargaining phase, submit their respective positions to an independent arbitrator.

The joint technical committee shall be responsible for assessing and analysing all pertinent information gathered during the interest based phase of the process. The members of the committee shall be required to bring forward any information they feel necessary to assist the parties in reaching

an amicable solution for the commencement of the fishery in a timely manner. They will represent their respective constituents in the collective bargaining phase of the model, should it become necessary.

The interest based approach requires the appointment of a facilitator. As part of his/her duties throughout the process, the facilitator shall:

- operate in a support role to the parties and the process;
- arrange for the conduct of meetings, including the scheduling of the times and locations;
- work with the joint technical committee to promote the conduct of meetings in a spirit of cooperation aimed at achieving a common goal, i.e., a mutually satisfactory settlement of issues for the commencement of the fishery under discussion;
- assist the parties in gathering and compiling all information required during the interest based phase. This may include assistance in the identification of reliable and acceptable sources of independent information;
- keep the arbitrator-in-waiting apprised of the discussions taking place in the interest based phase of the process;
- provide the arbitrator-in-waiting with all information made available to him/her and to the parties during the process;
- advise the arbitrator-in-waiting of any presentations to be made by independent sources and make every effort to ensure the arbitrator-in-waiting has an opportunity to attend such presentations;
- act in a further support role as the parties request; and

- provide a report to the Minister of Environment and Labour at the conclusion of the process, with a copy to the appointed arbitrator-in-waiting.

The arbitrator-in-waiting, following his/her appointment, shall, in consultation with the facilitator and the joint technical committee:

- become familiar with the issues to be addressed in the interest based and collective bargaining phases;
- review all documentation presented by the parties or the facilitator to prepare him/her to discharge his/her role as arbitrator should that become necessary;
- if necessary make a final, binding decision before the commencement of the fishery; and
- ensure that he/she is available within the time frames set out in the process to make that decision.

The proposed model contains a provision whereby the parties shall engage the services of an independent individual named by them to select a facilitator and an arbitrator-in-waiting in the event they are unable mutually to agree on a selection on their own. This individual shall select a person who shall act as the facilitator and a person who shall act as the arbitrator-in-waiting and shall notify the parties of the names of those individuals. This selection shall be made in time for the parties to include the names in their notification to the Minister of Environment and Labour. In the event the parties are unable to agree on the selection of an individual to choose the facilitator and arbitrator-in-waiting, the Minister of Environment and Labour shall make the selection of the facilitator and the arbitrator-in-waiting.

The time frames in which the process must take place will be different for the different species of fish under discussion. By February 15, 1998 for negotiations taking place in 1998, and by January 1, 1999, the parties shall provide the Minister of Environment and Labour with a full schedule listing the fish species for which they intend to negotiate prices and related issues, and the projected opening dates for each fishery. Sixty days prior to the expected opening date for the fishery, notice to commence the process must be given to the Minister of Environment and Labour either jointly or individually by the parties to an existing or proposed collective agreement. For example, if the normal start date for snow crab is April 1, notice to commence the process must be given no later than January 30.

Also included in the notice shall be:

- The names of the members of the joint technical committee who will be participating in the process.
- The name of the facilitator whom the parties wish to have appointed to assist the parties in the process.
- The name of the arbitrator whom the parties wish to have make the final selection for settlement in the event of a failure to reach an agreement in the interest based/collective bargaining phase.

While the notice from both parties must be given to the Minister within this sixty day time limit for each species of fish to be the subject of interest based collective bargaining, this does not mean that in each and every case the process will require sixty days to complete. The schedule for negotiations

and for deployment of this process will be the subject of discussion and agreement between the parties and the facilitator. Snow crab, for example, may require sixty days whereas capelin may require only thirty days, depending on the issues which need to be explored and addressed in order that the parties ascertain and arrive at a mutually satisfactory agreement.

The Minister shall appoint the persons named in the notice and inform the parties immediately of their appointment. In the event the parties do not notify the Minister by the required time limit the particular fishery in question shall proceed and in no event shall there be a cessation of business dealings on the part of fish harvesters or fish processors.

The facilitator, upon appointment, shall contact the parties to arrange the commencement of the interest based, fact finding and issue identification phase of the process. During this phase of the process, the joint technical committee, with the support of the facilitator, shall gather and analyse all relevant information required to assist in negotiations and in the determination of an acceptable price for the commencement of the particular fishery. The information would be collected from a variety of independent sources acceptable to the parties such as the recommended Industrial Analysis and Market Intelligence Unit of the Department of Fisheries and Aquaculture, independent fishing industry consultants, Canadian Embassies, or any other sources acceptable and available to the parties.

This information gathering and issue identification process is a key component of the new interest based/collective bargaining model. It removes at the outset the traditional process whereby each

party to collective bargaining begins by staking out a position on fish prices and other issues related to collective bargaining before all relevant information is on the table. This posturing has tended in the past to raise the level of mistrust.

Under the new model, the information that will be crucial in assisting the parties to reach an agreement on fish prices and related matters will be supplied in the context of interest based discussions. Positional bargaining would not occur during this phase of the process. As well, the information will be supplied by independent credible sources who are widely acceptable to both sides and who are very knowledgeable about the particular fishery and the industry in general. Accordingly, fish harvesters and fish processors can be mutually assured that the information will be accurate and complete.

The facilitator shall submit a report to the Minister of Environment and Labour at the conclusion of the process. The facilitator shall also keep the arbitrator-in-waiting informed and shall supply him/her with any and all information exchanged by the parties or provided to them during the interest based phase.

Following the interest based phase of negotiations, if an agreement has not been reached, the parties will enter into collective bargaining. During this phase, the parties may continue to utilize the services of the facilitator in a more direct approach. This should be a matter for discussion between the parties and the facilitator. Should an agreement not be reached on the issues under discussion by the parties within fourteen days prior to date for the start of the fishery, the parties shall submit

their respective final positions to the appointed arbitrator-in-waiting for a decision. The arbitrator shall arrange a meeting with both parties at which time each party shall simultaneously present the arbitrator with their final best offer in writing for resolution of the outstanding differences. The arbitrator shall hear the respective positions of each party and shall select one of those positions and notify the parties of his or her decision no later than seven days prior to the expected start date of the particular fishery.

The arbitrator's decision on price and other matters shall form the basis of the collective agreement for the commencement of that fishery. If the decision of the arbitrator provides for an interim price rather than a price for the full season for the particular fishery in question, the parties would continue to negotiate, and if they are unable to reach an agreement within two weeks prior to the scheduled date of expiry of the interim price, the arbitrator shall render a further decision. The arbitrator would continue to be seized of the matter and would make a decision based upon further final offers by both parties.

The role of the arbitrator becomes critical if arbitration has to be utilized in settling a dispute. That is why the model provides for the appointment of the arbitrator at the beginning of the process. This individual, while not actively involved in meetings and discussions in the early stages will be kept aware of all the issues under analysis and discussion with respect to the particular fishery. The arbitrator will not be an individual who is simply selected from a list of arbitrators, at the end of a process, and asked to enter into this process cold, without the knowledge of the fishery that will be vital in making a final decision. To the best of our knowledge, this key component of the proposed

new model is unique.

Should the parties at any time during the process or following the decision of the arbitrator agree on an alternate arrangement for the determination of a price for a particular fishery, the parties shall be free to engage in such an arrangement provided there may be no strike or lock-out, (cessation of business dealings) that would delay the commencement or prosecution of the fishery.

The model being proposed by the Task Force for the conduct of interest based collective bargaining in the fishing industry is recommended as a pilot project for two years, commencing with the fishing season in 1998 and ending in December, 1999. The Task Force recommends that appropriate legislative amendments be made to the Fishing Industry Collective Bargaining Act, as outlined in Chapter Ten to give effect to the provisions for a new model. The Task Force also recommends that the proposed pilot project be the subject of a review at the end of the first year. At that time, either or both parties may recommend to Government that the process be discontinued and replaced either by the current or some other process the parties feel to be more beneficial and better serve their needs and that of the industry and the Province. The draft legislation should make provision for such a contingency.

During the course of the two year pilot project, which shall run from the date of its implementation until December 31, 1999, unless amended as provided for in the pilot project model, the parties engaged in collective bargaining in the fishing industry shall not alter rates of pay for fish or any other terms or conditions in a collective agreement which were in place for a previous fishing season

for that particular species until:

i) A new agreement is reached, or

ii) a decision has been made by the arbitrator on terms and conditions for the particular fishery prior to the commencement date for that fishery.

As previously mentioned, the Fishing Industry Collective Bargaining Act will require an amendment to give this model effect. This may create a logistical issue for the 1998 fishery, in particular for the snow crab fishery. The Task Force has been advised that ideally the snow crab fishery should be ready to commence by April 1, 1998. This means that in order for this new model to be applied to the snow crab fishery for 1998 it will be necessary for the parties to snow crab discussions to engage the process by January 30, 1998. **The Task Force therefore recommends that the parties mutually agree by exchange of letters, to be filed with the Minister of Environment and Labour, to engage the process as soon as is practical while awaiting the passage of legislation to give effect to this process for 1998 and 1999.** The Task Force understands that a formal ratification of this model is required which could take up to two weeks following the release of the report to the parties.

A further amendment to the Act will be required for the purpose of the two year pilot project, to provide a mechanism to ensure that any collective agreement binding on the FFAW/CAW and FANL will also apply to, and be binding upon, any other fish processor operating in the industry for that particular species.

It is essential to note that in the many meetings and discussions the Task Force held with the FFAW/CAW and FANL we were impressed with the level of cooperation afforded to the Task Force by those two groups. It is clear to us that the FFAW/CAW and FANL desire a new approach to doing business that will better serve the needs of their respective constituents, the industry in general, and the Province as a whole.

Both the FFAW/CAW and FANL have already demonstrated a high level of commitment to this process. Both sides were in agreement on the components of the new model, subject to ratification by their respective constituencies. They agreed the model has to contain a more structured approach to the bargaining process than is currently the case. They agreed the process needs to be completed within a defined time limit that allows a full and fair opportunity for the parties to address issues in the fishery prior to the opening of that fishery. They agreed a dispute resolution mechanism should trigger a settlement of fish prices and any related matters in the event the parties are unable to agree. They agreed the dispute resolution mechanism should also be completed in time for a timely start of each fishery. They agreed that consideration should be given to a "price-to-market formula" as a means of addressing fish prices and that this price-to-market formula would be a valuable tool in this regard. A price-to-market formula is not foreign to the fishing industry, as it has been used from time to time by the parties, over the years, in various fisheries.

It is absolutely imperative that in 1998 we turn the corner. We must demonstrate to our customers and to our competitors that this industry is coming together to produce the finest quality product that can be produced anywhere. The effort has to begin when the pots and nets are hauled over the side

of the boat and continue until it reaches the dinner table. With a determined and dedicated effort, the fishing industry of Newfoundland and Labrador can continue to be a major global competitor for many years to come. We have the skill, the experience, the know-how and the resources to make *a new beginning*. Given the time frames involved, this will however, be a daunting task which will demand continuity of commitment and hard work on behalf of all the players if we are to address successfully the major challenges before us. We were gratified to see a determined and combined effort on the part of the FFAW/CAW and FANL to work together to ensure our fishing industry competes with the "best of the best" in the international marketplace.

The Task Force, in fulfilment of its mandate, has examined a number of alternatives to the collective bargaining process including the introduction of a free market system, an auction based system for all landings as well as a price settlement board established by government. The Task Force recommends modifications be made to the Fishing Industry Collective Bargaining Act to facilitate a stakeholder driven process which incorporates the following features:

- **Development of a schedule for negotiations for all species, to be established by the parties at the beginning of the year, with notice of same being given to the Minister of Environment and Labour;**
- **Sixty days prior to the expected opening date for each species the Minister of Environment and Labour is to be notified with respect to the negotiating schedule for that species, the**

negotiation of which is to take place within the context of an interest based approach;

- **Appointment of a joint committee of union and processors' representatives to undertake a structured process beginning with fact finding and issue identification followed by negotiation, if necessary;**
- **A facilitator to be appointed by the parties at the outset of the process, to assist in both the fact finding and negotiating process;**
- **An arbitrator-in-waiting to be appointed who would settle any disputes in the collective bargaining process including a dispute on prices, with such arbitration to be based upon final offer selection or such other form of arbitration as the parties may mutually select. The arbitrator-in-waiting is to be kept apprised of all information and discussions in the fact finding and collective bargaining processes;**
- **A default mechanism is to be put in place by the parties so that any decision of the parties on appointments and scheduling which is not made by the parties, is made by a mutually agreed third party; failing agreement on this third party the decisions which have fallen in default will be made by the Minister of Environment and Labour.**
- **During the course of the two year pilot project, which shall run from the date of its implementation until December 31, 1999, unless amended as provided for in the pilot project model, the parties engaged in collective**

bargaining in the fishing industry shall not alter rates of pay for fish or any other terms or conditions of a collective agreement which were in place for a previous fishing season in that particular species until:

i) A new agreement is reached, or

ii) A decision has been made by the arbitrator on terms and conditions for the particular fishery prior to the commencement date for that fishery.

- **This pilot project is recommended to be undertaken for a two year period covering 1998 and 1999 with a provision for review at the end of the first year;**
- **In the event that an agreement is not reached within fourteen days prior to the date of commencement for the fishery, the parties shall submit their respective final positions to the appointed arbitrator-in-waiting for a decision. The arbitrator shall hear the respective positions of each party and shall select one of those positions and notify the parties of his/her decision no later than seven days prior to the expected start of the particular fishery;**
- **The arbitrator's decision on price and other matters shall form the basis of the collective agreement for the commencement of that fishery;**
- **If the decision of the arbitrator provides for an interim price rather than a price for the full season for the particular fishery in question, the parties would continue to negotiate, and if they were unable to reach an**

agreement within two weeks prior to the scheduled date of expiry of the interim price, the arbitrator would render a further decision based upon further final offers made by both parties;

- **A no strike, no lockout provision for the term of the pilot project; and**
- **The Fishing Industry Collective Bargaining Act to be amended to accommodate this pilot project and to make any collective agreement reached between FFAW/CAW and FANL binding on all processors.**

Chapter 10

LEGISLATIVE CHANGES

A number of changes in the Fishing Industry Collective Bargaining Act will be needed to implement the recommendations of the Task Force with respect to the creation of an alternate price dispute settlement mechanism and to enable the parties to introduce an auction system for selected fish species on a pilot project basis.

Firstly, the provisions of the Fishing Industry Collective Bargaining Act should be amended so as to provide for the institution of the model described in Chapter Nine of this report. In particular, the operation of Section 26 and subsection 27(2), which make provision for industrial action (i.e., strikes and/or lockouts), should be suspended upon adoption of the model contained in Chapter Nine for the life of this pilot project.

Secondly, and related to the above, the Fishing Industry Collective Bargaining Act should be amended to make it clear that the time limits for commencement of negotiations, selection of a facilitator and an arbitrator-in-waiting, negotiations and completion of a bargaining process set out in and pursuant to the provisions of the pilot project dispute settlement model described in Chapter Nine of this report would override in every respect the provisions of the Fishing Industry Collective Bargaining Act or the Labour Relations Act where they are in conflict with the same.

Thirdly, the Act should be amended to make it clear that if the arbitrator-in-waiting

referenced in the model, described in Chapter Nine of this report, is called upon to and does arbitrate the price of a given fish species and/or any terms and conditions of contract between fish harvesters and fish processors that his/her arbitrated decision would constitute, together with any other points that the parties had agreed upon to that point in time, a collective agreement within the meaning and intent of the Act.

Fourthly, Section 23 of the Act, which contains a provision deeming a collective agreement to be for at least one year's duration, should be suspended during the life of this pilot project.

Fifthly, so as to enable fish harvesters and fish processors to engage and participate (if they so chose to) in the pilot project auction system referenced in Chapter Four of this report, the Fishing Industry Collective Bargaining Act should be further amended to permit one or more fish harvesters to offer to sell their fish on the open market through the auction system described in Chapter Four at a price that may be less than the minimum price established pursuant to a collective agreement reached as a result of the collective bargaining or arbitration process described in Chapter Nine of this report.

Sixth, the Fishing Industry Collective Bargaining Act should be amended to permit an operators' organization to become accredited to negotiate on behalf of all of the processors in this Province. This amendment should be similar in form to that which was placed before the House of Assembly in 1991. Furthermore, and at the same time so as to ensure that any bargained or arbitrated agreement reached as a result of the pilot project model advocated by

the Task Force in Chapter Nine of this report is binding on industry participants, the Fishing Industry Collective Bargaining Act should be further amended: to require the certified bargaining agent for fish harvesters, the FFAW/CAW, where it intends to negotiate a price for a given species, to give notice to all processors engaged in the processing of that species; and to provide that where a collective agreement is reached with a number of processors or a processors' organization representing a majority of the volume of production for that negotiated species in the previous year, that the terms and conditions of the collective agreement reached between these parties by negotiation or arbitration shall be binding upon all other fish processors in the Province, unless they enter into a separate collective agreement with the certified bargaining agent representing fish harvesters.

Following ratification by the parties of the price dispute settlement model as contained in Chapter Nine of this report, the Task Force would recommend that Government prepare and introduce the necessary Bill to implement same for passage in the House of Assembly with retroactive effect to January 1, 1998.

It is proposed that the model be implemented by agreement between the parties pending the making of the above noted amendments.

Chapter 11

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Findings and Recommendations on Collective Bargaining:

1. **The Task Force finds that there is a widely held view among fish harvesters and processors/buyers, that, collectively, we must seek a better way to address and resolve fish price disputes.**

2. **The Task Force finds that, while the Fishing Industry Collective Bargaining Act may not have facilitated the collective bargaining process in the fishing industry, the legislation was not the cause of the recent price disputes. It was neither helpful nor an impediment to reaching agreement.**

3. **The Task Force finds that the 1997 labour dispute in the crab sector was caused by a series of events, in order of importance, including:**

    - **The mistrust between parties that was based on experiences from past collective bargaining;**
    - **High expectations created by record high prices in 1995 and by prices offered, and reputed to being offered, in the Maritimes and Quebec;**
    - **Uncertainty generated by market conditions and the lack of independent information; and**
    - **The breakdown of negotiations early in the season.**

4. **The Task Force recommends that the parties establish a schedule for each species for which prices are to be negotiated and that the schedule allow for a period of both fact finding and bargaining.**

5. **The Task Force recommends modifications be made to the Fishing Industry Collective Bargaining Act to facilitate a stakeholder driven process which incorporates the following features:**

- **Development of a schedule for negotiations for all species to be established by the parties at the beginning of the year, with notice of same being given to the Minister of Environment and Labour.**
- **Sixty days prior to the expected opening date for each species the Minister of Environment and Labour is to be notified with respect to the negotiating schedule for that species, the negotiation of which is to take place within the context of an interest based approach.**
- **Appointment of a joint technical committee of union and industry representatives to undertake a structured process, beginning with fact finding and issue identification, followed by negotiation, if necessary;**
- **A facilitator to be appointed by the parties at the outset of the process, to assist in both the fact finding and negotiating process;**
- **An arbitrator-in-waiting to be appointed who would settle any disputes in the collective bargaining process, including a dispute on prices, with such arbitration to be based upon final offer selection or such other form of arbitration that the parties may mutually select. The arbitrator-in-**

waiting is to be kept apprised of all information and discussions in the fact finding and collective bargaining processes;

- A default mechanism is to be put in place by the parties so that any decision of the parties on appointments and scheduling which is not being made by the parties, is made by a mutually agreed third party; failing agreement on this third party the decisions which have fallen in default will be made by the Minister of Environment and Labour.
- During the course of the two year pilot project, which shall run from the date of its implementation until December 31, 1999, unless amended as provided for in the pilot project model, the parties engaged in collective bargaining in the fishing industry shall not alter rates of pay for fish or any other terms or conditions in a collective agreement which were in place for a previous fishing season in that particular species until:
  - i) A new agreement is reached, or
  - ii) A decision has been made by the arbitrator on terms and conditions for the particular fishery prior to the commencement date for that fishery.
- This pilot project is recommended to be undertaken for a two year period covering 1998 and 1999 with a provision for review at the end of the first year;
- In the event that an agreement is not reached within fourteen days prior to the date of commencement for the fishery, the parties shall submit their respective final positions to the appointed arbitrator-in-waiting for a decision. The arbitrator shall hear the respective positions of each party and shall select one of those positions and notify the parties of

his/her decision no later than seven days prior to the expected start of the particular fishery;

- **The arbitrator's decision on price and other matters shall form the basis of the collective agreement for the commencement of that fishery;**
- **If the decision of the arbitrator provides for an interim price rather than a price for the full season for the particular fishery in question, the parties would continue to negotiate, and if they were unable to reach an agreement within two weeks prior to the scheduled date of expiry of the interim price, the arbitrator would render a further decision based upon further final offers made by both parties;**
- **A no strike, no lockout provision for the term of the pilot project; and**
- **The Fishing Industry Collective Bargaining Act be amended to accommodate this pilot project and to make any collective agreement reached between FFAW/CAW and FANL binding on all processors.**

6. **The Task Force recommends that the parties mutually agree by exchange of letters to be filed with the Minister of Environment and Labour to engage the process as soon as is practical while awaiting the passage of legislation to give effect to this process for 1998 and 1999.**

7. **The Task Force recommends that, during the life of the pilot project, negotiations be conducted under a news blackout until such time as the parties issue a joint statement.**

Findings and Recommendations on Auction Pilot Project:

8. The Task Force recommends that planning and consultation begin as soon as possible to undertake an auction, based upon the following considerations:

- **The auction pilot to begin in 1999 or in 1998, if at all possible;**
- **The initial focus to be cod in areas 3Ps and 4R 3Pn;**
- **The auction to be conducted electronically, using a hail at sea system;**
- **Proposals to be called for an independent company to operate the system (the Fisheries Resource Centre would be free to submit a proposal, as suggested in the supplementary report prepared by the Centre for Aquaculture and Seafood Development of the Fisheries and Marine Institute of Memorial University.);**
- **Appropriate legislative changes should be made to exempt the pilot auction from the provisions of the Fishing Industry Collective Bargaining Act, while ensuring the proper deduction and remission of Union dues by the auction house; and**
- **Expansion of the pilot project to other species could begin as soon as feasible.**

Findings and Recommendations on Transparency and Prices:

9. The Task Force recommends to the parties that a process be put in place, on a pilot project basis, for the compilation of price information on the prices

realized in the marketplace for Newfoundland and Labrador snow crab. This information should be compiled for 1998 and 1999, concurrently with the period for the proposed pilot project on price settlement recommended by the Task Force in Chapter Nine. These data should be assembled by a mutually acceptable third party, with safeguards to prevent disclosure of proprietary information. This project should track the final net sales price, excluding commissions, paid for all markets in which Newfoundland and Labrador snow crab is sold.

10. **The Task Force recommends to the parties that price incentives be established to reward and encourage the highest quality standards. Furthermore, the Task Force recommends that the parties give consideration to the establishment of a price-to-market formula, both for the purpose of rewarding quality and also to improve transparency and trust. Such transparency and trust would be enhanced through the disclosure of the actual returns received by the Newfoundland and Labrador fishing industry in the various marketplaces which it supplies, based upon an audit of these prices, through the review of sales invoices conducted by an independent third party.**

11. **The Task Force recommends that an Industrial Analysis and Market Intelligence Unit be established in the Department of Fisheries and Aquaculture, to assist the parties in gathering information for the purpose of price negotiations.**

12. **The Task Force recommends to the parties that, in the interest of creating greater transparency in grading and weighing of snow crab, an assessment be undertaken of the feasibility of creating a joint FFAW/CAW and FANL body to oversee the conduct of grading and weighing, with such a body to commence operation prior to the 1999 fishery.**

Findings and Recommendations on Competition:

13. **The Task Force is unable to conclude that corporate concentration and control has reached the level that Government must intervene.**

14. **The Task Force recommends that Government continue to monitor the levels of corporate concentration in the industry.**

15. **The Task Force recommends that the Province, through the Departments of Fisheries and Aquaculture, and Development and Rural Renewal, undertake a review of the current loan, financing available to fish harvesters, with a view to putting in place an alternative source of funding so that harvesters are not obliged to lose their independence in order to seek funding for operations, repairs and capital improvements. This review should be conducted through a joint government/industry/union committee which will allow full consultation with all of the stakeholders. The Government of Canada, through the Department of Fisheries and Oceans (DFO), should be invited to participate in this process, with a view to sharing with the Province in providing the means**

whereby the DFO policy of fleet separation can be upheld through enhancing the financial independence of fish harvesters.

16. **The Department of Fisheries and Aquaculture should examine the merits of selling or leasing its icemaking facilities to fish harvesters or organizations of fish harvesters. In this process, the Department should establish policy guidelines as to whether it is appropriate for these facilities to be turned over to processors, or to other third parties, recognizing the independent interests of fish harvesters. Furthermore, this review should examine the full range of port services and facilities which should be available to the fishing industry on a regional basis. This review should be conducted in concert with industry stakeholders.**

<u>Findings and Recommendations on Outside Buyers:</u>

17. **Given the information available, the Task Force does not recommend to Government the removal of the restriction against the export of unprocessed crab. The Task Force recommends that Government conduct a carefully planned and monitored pilot project to be designed in advance of the 1998 season and based upon the following suggested guidelines:**

- **A limited share of landings in each region to be allocated for outside buyers. This would ensure that the West coast and Coastal Labrador would not be disproportionately impacted by such a program;**

- **Observers at sea on participating vessels to prevent culling and ensure only sea run crab;**
- **A full cost benefit analysis should be prepared which would assess the cost in terms of lost processing employment against the benefits arising to fish harvesters from any higher prices achieved;**
- **The destination and product form of the final product to be monitored;**
- **The duration of the pilot project to be the full 1998 crab season;**
- **Mechanisms should be in place to ensure that Employment Insurance premiums, and Worker's Compensation premiums are paid and that outside buyers are subject to the same rules and costs as domestic processors wherever applicable; and**
- **Should such a pilot project be accepted in principle, then a committee involving FANL, the FFAW/CAW, the Department of Fisheries and Oceans and the Department of Fisheries and Aquaculture should meet to prepare a full implementation plan.**

<u>Findings and Recommendations on Quality:</u>

18. **The Task Force recommends the development of a "partnership for quality program" between fish harvesters and fish processors, sanctioned by Government, to ensure that fish quality is maximized at every step of the process, from crab pot to table.**

19. **A joint FANL and FFAW/CAW working group be activated to address**

quality, marketing and pricing mechanisms.

20. The Task Force recommends that a general and ongoing education program be developed for all key personnel, including fish harvesters, fish transporters, fish processors and plant workers.

21. It is recommended that a Premium Quality Program (i.e., Seal of Excellence) for snow crab be developed by industry stakeholders, with identified criteria certifying that recognized industry participants, i.e., fish harvesters, transporters and processors have achieved that level of competency, on a consistent basis as prescribed in the program to qualify for this designation.

22. Consideration should be given by Government to appointing a fully dedicated individual acceptable to the parties and reporting to the Minister of Fisheries and Aquaculture to oversee discussions with stakeholders with respect to the above noted matters and to assist them in implementing the same.

23. The Task Force recommends that the Department of Fisheries and Aquaculture in consultation with fish harvesters and processors, conduct a review of regional icemaking facilities, as part of an overall assessment of designated landing sites throughout the Province.

24. Based upon the findings of the Marine Institute and our own consultations, the Task Force has prepared a more detailed report on quality which is found in

Appendix A to this report. The Task Force recommends that the suggestions contained in the Appendix be the basis for a series of consultations with the parties.

Findings on Marketing as a Factor in Price Differentials:

25. The Task Force accepts the findings of its marketing consultant that the differentials in price paid to fish harvesters for snow crab between Newfoundland and Labrador and other provinces and countries are attributable to intrinsic characteristics and controllable quality factors, rather than to ineffective marketing. These findings were corroborated by other information available to the Task Force including the information obtained by the Chair of the Task Force from participation in the Mission to Japan led by the Minister of Fisheries and Aquaculture.

Findings on Price Differentials:

26. The Task Force finds that the main reasons for the price differences between prices paid in Newfoundland and Labrador and prices paid in other crab fishing provinces and countries, in order of importance, are as follows:

- **the intrinsic characteristics of our crab, compared with other areas;**
- **quality differences; and**
- **competitive factors.**

The Task Force notes that measures have already been taken by the Minister of Fisheries and Aquaculture and by the parties to assign a high priority to a broadly based program of quality assurance and that barriers to new entrants into the crab processing industry have been reduced through the new licensing policies put in place by the Minister.

Findings and Recommendations on Scientific Research:

27. The Task Force recommends that an expanded commitment be given to industrial research by both the public and private sector, to improve quality and to enhance the value and consumer recognition of Newfoundland and Labrador crab products.

Appendix A

QUALITY SUGGESTIONS

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As with any fish species, the key criterion in producing a high quality snow crab product is the raw material's freshness, i.e. liveliness. This one factor takes precedence over all other quality issues. In order to accomplish this objective, handling practices, and the holding conditions to which the crab is subjected, from the point of harvest to the point of processing, must be conducive to the survival of the animal. Furthermore, these conditions must be met throughout the entire process. The survivability of crab is primarily dependent upon three factors;

- the avoidance of physical trauma;
- the maintenance of the conditions to which it is exposed within the temperature limits of 0.5°C to 4.0°C at a relative humidity greater than 75 percent; and
- reducing the time elapsing from harvesting to processing.

The suggestions which follow draw largely upon the study into quality issues in the Newfoundland and Labrador crab industry conducted for the Task Force by the Marine Institute and are extensively quoted in this Appendix.

Harvesting Suggestions

With respect to the harvesting of snow crab, and the operations of the harvesting sector, the following suggestions are made:

- **"A study be undertaken to evaluate design modifications to the standard "Newfoundland crab pot"**. The objectives of the study, would be to reduce the incidence of crab being tangled in the netting, to limit the loss of appendages and to

facilitate removal of the catch, but maintain fishing efficiency, and the escapement of crab with less than 3.75 inches carapace width thus conserving future year classes. This recommendation would address the practicalities associated with reducing the levels of trauma to which crab are subjected whilst being removed from the crab pot."

- **Following consultations between fish harvesters and processors, vessels prosecuting the crab fishery should use a combination of trip limits and schedules to ensure that raw material supply can be properly matched with licenced processing capacity for quality and resource management reasons.**

- **"All vessels greater than 35 feet prosecuting the snow crab fishery be equipped with insulated fish holding capabilities, with a minimum 'R' value of 14.** This should include all side bulkheads, and hatch covers. Either fixed or portable holding structures are permissible. This provision would ensure that temperature fluctuations are minimized, and that the holding conditions are maintained within acceptable temperature and relative humidity limits.

- **"All vessels greater than 35 feet store crab in movable insulated or uninsulated containers.**

  This would significantly reduce the level of physical handling that the crab are subjected to, and expedite the unloading process.

- **"All vessels conduct onboard culling under a protective cover.**

  This would minimize the level of exposure of crab to direct sunlight, (and associated radiant heat), low relative humidity, airflow, and rain. This protective cover could be as simple as a tarpaulin stretched over a frame."

- **All vessels should be equipped with a shute to ensure their crab is conveyed from the deck to the hold of the vessel without rough treatment or being dropped.** This would prevent the damage caused to crab onboard vessels by being dropped into the hold from the deck.

- **"All licensed vessels depart port with a minimum ice: trip quota ratio of 1:3, stored under insulated conditions.** This provision would ensure adequate cooling capability for the crab harvested.

- **"All licensed vessels maintain stowage density of boxed crab of 46 lb. per 70 L tote pan plus or minus 10%.** This is equivalent to the weight of crab in a 'standard' 70L tote pan being limited to a maximum of 46 lbs. This has been demonstrated to be the optimal weight of crab in a tote pan. It permits adequate space for icing, and avoids crushing, and the amputation of protruding appendages.

- **"All licensed vessels less than 35 feet, (not using boxes) bulk stow crab to a maximum depth of 2 feet, and ensure that there is adequate provision for drainage below the crab.** This would minimize the effects of crushing on the crab,

and ensure that crab in the bottom of the hold are prevented from suffocating in deoxygenated water."

- **All harvested crab determined to have bitter crab disease not be returned to the water, but be separately contained and stored onboard the harvesting vessel and bought to port for disposal on land.** This would eliminate return of diseased crab to the population and thereby help prevent this condition from spreading.

Wharf Discharging Suggestions

"It is essential that the chain of good handling and holding practices for crab does not break down at the point of discharge. If it does, then all conscientious efforts by harvesters to deliver high quality product to the wharf are to no avail. In this regard, the following suggestions are made with respect to wharf discharging operations.

- **"The number of designated landing ports be reduced from the approximately 200 named for the 1997 fishery, through a process of consultation involving the stakeholders.** This would reduce the logistical problems associated with servicing and policing such a large number of geographically diverse sites, and consolidate crab landings for the purposes of distribution to processing plants.

- "**All designated landing sites should have ice storage facilities.** This would enable industry participants to ensure that adequate ice is available to comply with the suggested minimum ice:crab ratios. Ice making facilities with an enclosed, insulated

building would be most suitable. However, a supported roof, which would protect insulated boxes of ice from direct sunlight would be advantageous over a total lack of any ice storage facilities.

- "**All designated landing sites should have insulated structures to accommodate dockside graders.** This would ensure that grading samples of crab are protected from adverse conditions. These structures could be kept cool and moist using melting ice.

- "**All designated landing sites should have a minimum of two (2) functional mechanical hoists.** This would be in addition to onboard hoists on larger vessels. The availability of mechanical unloading systems would expedite the discharging of vessels, and reduce the waiting time for vessels to unload.

- "**All designated landing sites should have truck loading facilities.** This would prevent subjecting crab to excessive levels of physical trauma by manually 'throwing' boxes of crab from ground level into truck bodies. The facilities could comprise forklifts, mobile or fixed loading ramps, hydraulic lifts, roller conveyors or any combination of these.

- "**All designated landing sites should have an 'approved' water supply, with a supply line diameter greater than 3/4" @ 40 psi.** This would ensure that vessels, boxes, grading tables, wharves, and other related infrastructure could be maintained in a sanitary manner."

- **No vessel should be permitted to discharge it's catch of crab until such time as acceptable transport is available at the wharf.** It would be preferable to have chilled holding facilities at all designated landing sites, in order to avoid crab being exposed to adverse ambient conditions for periods of time between discharge and the arrival of transportation. However, for a number of reasons, the principal of which would be the cost of capital expenditure, such a requirement is viewed as impractical. A compromise situation would be to maintain the crab on board the fishing vessel, (which would have adequate holding capabilities assuming that the above suggestions are implemented), until such time as suitable transport is available for direct transfer of the crab from vessel to truck.

Transportation Suggestions

"Extensive overland transportation of snow crab is a peculiar feature of the Newfoundland snow crab fishery, when compared with all other opilio fisheries. The risk of exposure of the crab to adverse conditions is considerable, and has a major impact on the quality of crab delivered to the processing plants. It must again be emphasized that the handling and holding of crab is a chain of events. In order to maintain high levels of freshness, all the links must comprise good handling and holding procedures. In this regard, the following suggestions are made concerning the ground transportation of snow crab.

- **"Only insulated and/or mechanically refrigerated trucks should be used for the transportation of live crab, or crab should be transported in tightly covered**

insulated containers. This stipulation would minimize temperature and humidity fluctuations experienced by loads of crab.

- **"All transportation used for moving live crab should carry sufficient ice to ensure that:**
  - **the air temperature is reduced to 0°C to 4°C within 15 minutes of closing loading doors.**
  - **the relative humidity within the truck body attains a level exceeding 75 percent within 15 minutes of closing the loading doors.**
  - **conditions within the truck body or insulated container used for transporting crab should be maintained at temperatures between 0°C and 4°C, and relative humidity greater than 75 percent.** These provisions would ensure that crab is maintained in optimal conditions for survivability during transportation.

- **"All operators of vehicles transporting live crab should maintain a log book detailing the following:**
  - **time and location of loading of each lot;**
  - **approximate weight of each lot (or #boxes);**
  - **temperature and relative humidity records, at maximum two hour intervals; and**
  - **loading plan identifying individual lots.** The maintenance of log books would enable any inspection officer, and/or plant personnel to obtain detail

on the product history, and use this for informed decision making.

At Plant Handling Suggestions

The handling and holding of crab at processing plants, is the last link in the chain of events prior to processing. It has been observed that the purchasing practices of certain operations exceed their daily production capacity. As a result, most plants have a requirement for the holding of live crab, for periods of up to two days. In addition, in order to schedule production in accordance with final pack mix, it is beneficial to process lots according to freshness, and intrinsic quality. Processing operations must therefore have the capability of holding crab under optimal conditions, and segregating crab by lot. In this regard, the following suggestions are made:

- **"All snow crab which has been purchased by an operating company, and is on the company's site, should be maintained in an environment where the temperature is between 0°C and 4°C, with a relative humidity greater than 75 percent.** This would ensure that processing companies maintain live snow crab in a manner conducive to maintaining freshness.

- **"As a mandatory requirement of a Quality Management Program, all crab processors should maintain records of crab received which detail:**
  - **time of arrival at plant;**
  - **condition (percent lively, weak, critically weak, dead), temperature and relative humidity at time of arrival;**
  - **temperature and relative humidity of holding facilities (including stationary trucks) at maximum 2 hour intervals. If temperatures exceed**

4°C or relative humidity less than 75 percent, corrective action must be taken, and recorded; and

- **detailed lot identification."**

Further Initiatives and Interventions

In addition to the above suggestions regarding handling and holding practices in the snow crab industry, several other suggestions are made with respect to initiatives which would assist in the overall quality improvement of Newfoundland and Labrador snow crab products.

- **"An industry wide forum on the Newfoundland and Labrador snow crab fishery be convened in 1998.** This forum should be organized by an independent third party.

- **"A study be commissioned to investigate the development of a method or technology which would objectively quantify the physiological state (liveliness) of snow crab.** The importance of freshness of crab with respect to quality is not disputed. A successful result from this initiative would enable the level of freshness to be quantified by private and public sector industry participants.

- **Following completion of the above noted study the Task Force suggests that fish harvesters and processors develop, with the assistance of the Department of Fisheries and Aquaculture and other knowledgeable persons, a quality grading system.** This would facilitate the paying to fish harvesters of different prices for

different qualities of crab product.

- **A video be developed for distribution to fish harvesters, fish transporters, and fish processors documenting good handling practices from pot to in plant processing.** The Canadian Centre for Fisheries Innovation and Government, in consultation with industry stakeholders, could play a valuable role in this regard.

- **Consideration should be given to the introduction of an experiment using refrigerated sea water systems on board vessels and salt water holding tanks at port and at processing facilities to determine whether or not the use of such refrigerated sea water systems and/or holding tanks could cost effectively improve the quality of crab products.**

- **Consideration should be given to the introduction of a system whereby crab would be tracked continuously from the point of harvest, preferably through the use of containers which could be used, without transfer from one container to another, from harvesting to processing, with the time, temperature and relative humidity to be monitored, and with a guideline that no crab could be processed at any crab processing facility in the Province more than 48 hours after being landed, unless it can be shown to the satisfaction of a fish inspector that the crab was alive upon processing.**

These measures will require the cooperation and good will of fish harvesters, fish processors and their representatives, the Federal Department of Fisheries and Oceans, and the Provincial Department

of Fisheries and Aquaculture. Consultations concerning these measures should begin in early 1998 in advance of the commencement of the crab fishery.